R19. Administrative Services, Child Welfare Parental Defense (Office of).
R19-1. Parental Defense Counsel Training.
R19-1-1. Authority.

(1) This rule is made under authority of Subsection 63A-11-202(3).

R19-1-2. Purpose.

(1) In accordance with Section 63A-11-202, these training standards are provided for parental defenders acting pursuant to a county contract or a contract with this office.

R19-1-3. Definitions.

As per Section 63A-11-102, the following terms are used for the purpose of this rule.

(1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Juvenile Courts, Parts 3 or 5.

(2) "Office" means the Office of Child Welfare Parental Defense.

(3) "Parental Defender" means a defense attorney who has contracted with the office or local county to provide parental defense services pursuant to Section 63A-11-102 et seq.

R19-1-4. Core Training.

(1) Parental defenders shall complete the core training course provided by the Office of Child Welfare Parental Defense prior to receiving an appointment by a juvenile court judge unless the Office determines that the defender has equivalent training and experience. The core training shall consist of at least eight hours of training which may include, but is not limited to the following topics:

(a) Relevant state law, federal law, case law and rules in family preservation and child welfare;

(b) The "Practice Model" of the Division of Children and Family Services;

(c) Attorney roles and responsibilities, including ethical considerations

(d) Dynamics of abuse and neglect; and

(e) Preserving and protecting parents' rights in juvenile court.

R19-1-5. Continuing Training.

(1) Each calendar year thereafter, a contracted parental defender shall complete at least eight hours of continuing legal education courses. The continuing legal education can consist of, but is not limited to, the core training topics listed in Section 4 above or any of these additional topics:

(a) Trial and appellate advocacy;

(b) Substance abuse, domestic violence and mental health issues;

(c) Grief and attachment;

(d) Custody and parent-time;

(e) Resources and services;

(f) Child development and communications;

(g) Medical issues in child welfare; and

(h) District-specific child welfare issues requiring resolution as identified by the district's judges or other actors in the child welfare system.

KEY: child welfare, parental defense
May 13, 2005 63A-11-107
Notice of Continuation October 21, 2009

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 63A-5-103 et seq.
Notice of Continuation October 26, 2009 63G-2-101 et seq.
63G-6-208(2)

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

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

R23-23-2. Authority.

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

R23-23-3. Definitions.

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

(2) In addition:

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

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

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

(d) "Employee(s)" is as defined in 63A-5-205(1)(c) and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than the use of the term employee for purposes of State of Utah Workers' Compensation laws along with their dependents.

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

R23-23-4. Applicability of Rule.

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

(a) the contract is for design and/or construction; and

(b) the prime contract is in the amount of $1,500,000 or greater; or

(i) a subcontract, at any tier, is in the amount of $750,000 or greater.

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

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

(b) the contract is a sole source contract,

(c) the contract is an emergency procurement.

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

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

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

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

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

(1) The failure to comply with this Rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

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

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

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

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

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

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

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

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63A-5-205(1)(e)(i) and (iii) is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

(a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, which details of the plan are provided on the website of the Division at http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf; or

(b) provides coverage that is actuarially equivalent to 75 percent of the benefit plan determined under Rule R23-23-7(3)(a) above and employer's premium contribution as required by statute.

(4) The health insurance must be available upon the first of the month following the initial ninety (90) days from the beginning of employment.

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

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

subcontractors or subconsultants meet the requirements of this Rule.

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

(8) Hearing and Penalties.

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

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

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

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

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

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

(c) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who violates the provisions of this Rule shall be liable to the employee for health care costs not covered by insurance.

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

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

KEY: health insurance, contractors, contracts
October 8, 2009 63A-5-103(1)(e)
63A-5-205

R27. Administrative Services, Fleet Operations.
R27-4. Vehicle Replacement and Expansion of State Fleet.
R27-4-1. Authority.

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi) 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63J-1-306(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the DFO staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV)

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the DFO staff, determine and establish, for each fiscal year:

(a) a SSFV

(b) the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Delegation of Division Duties.

(1) Pursuant to the provisions of UCA 63A-9-401(6), the Director of DFO, with the approval of the Executive director of the Department of Administrative Services, may delegate motor vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) The funding for the procurement of vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;

(b) Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program shall be designated "do not replace;" and

(c) In the event that the institution of higher education is unable to designate said vehicles as "do not replace," the institution shall warrant that it shall not use state appropriations to procure their respective replacements without legislative approval.

(2) Agreements made pursuant to Section 63A-9-401(6) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation by the institution of higher education that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO. The institution of higher education shall, at the request of DFO, provide DFO with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that the agreement is subject to the provisions of UCA 63J-1-306, Internal Service Funds - Governance and review; and

(g) a representation by the institution of higher education that it shall enter into DFO's fleet information system all information that would be otherwise required for vehicles owned, leased, operated or in the possession of the institution of higher education; and

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures on related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and

(i) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the Standard State Fleet Vehicle (SSFV) that will be purchased to take the place of each vehicle on the list.

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space
(b) Type of items carried
(c) Hauling or towing capacity
(d) Police pursuit capacity
(e) Off-road capacity
(f) 4x4 capacity
(g) Emergency service (police, fire, rescue services) capacity
(h) Attached equipment capacity (snow plows, winches, etc.)
(i) Other justifications as approved by the Director of DFO or the director's designee.

(5) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of a motor vehicle with a SSFV.

(6) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(7) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(8) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(9) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion or that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Prior to the purchase of an expansion motor vehicle, DFO shall provide each agency contact with the Standard State Fleet Vehicle (SSFV) that will be purchased.

(6) All expansion vehicles will default to a SSFV.

(7) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space
(b) Type of items carried
(c) Hauling or towing capacity
(d) Police pursuit capacity
(e) Off-road capacity
(f) 4x4 capacity
(g) Emergency service (police, fire, rescue services) capacity
(h) Attached equipment capacity (snow plows, winches, etc.)
(i) Other justifications as approved by the Director of DFO or the director's designee.

(8) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the expansion motor vehicle to be a non-SSFV.

(9) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(10) In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to providing DFO with proof of approval and funding, provide the Division of Finance with funds, for transfer to DFO, equal to the amount of depreciation that DFO would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall DFO purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

(11) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(12) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be

deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment a Management Information System (MIS) fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the SSFV established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades

shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) at the end of the applicable replacement cycle shall pay to DFO, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrade(s) prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to DFO, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

R27-4-10. Executive Vehicle Replacement.

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type rate and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle based on the standard executive vehicle purchase price.

(a) The alternative vehicle selection should not exceed the standard executive vehicle purchase price parameter guidelines.

(b) In the event that the agency chooses an alternative a vehicle that exceeds the standard vehicle purchase price guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle purchase price.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to DFO under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by DFO on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay DFO, an amount equal to the difference between the purchase price of the replacement

vehicle and amount of the capital credit.

(4) DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional fiscal year.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in R27-4-11(4), above, shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and effect a reduction in state fleet size.

(6) DFO shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in R27-4-11(4), above, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

R27-4-13. Disposal of State Vehicles.

(1) State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.

KEY: fleet expansion, vehicle replacement

October 8, 2009 **63A-9-401(1)(a)**

Notice of Continuation July 25, 2007 **63A-9-401(1)(d)(v)**

63A-9-401(1)(d)(ix)

63A-9-401(1)(d)(x)

63A-9-401(1)(d)(xi)

63A-9-401(1)(d)(xii)

63A-9-401(4)(ii)

R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting on the Public Meeting Notice Web site.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Committee or a party may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the governmental entity's reasonable costs and expenses. The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request; (ii) the timeliness of the request; (iii) whether petitioner has previously requested and received a postponement;(iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within five business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

KEY: government documents, state records committee, records appeal hearings
October 13, 2009 63G-2-502(2)(a)
Notice of Continuation September 23, 2009

R35. Administrative Services, Records Committee.
R35-3. Prehearing Conferences.
R35-3-1. Authority and Purpose.

In accordance with the general objectives of the Government Records Access and Management Act in facilitating access to records, and in keeping with the objectives of hearing procedures found in Section 63G-2-403, Utah Code, to resolve disputes, this rule authorizes and establishes the procedure for holding prehearing conferences.

R35-3-2. Scheduling Prehearing Conferences.

(a) In the process of planning and organizing efforts to execute appeals which are filed pursuant to Section 63G-2-403, the chair of the state records committee or another member of the state records committee assigned by the state records committee chair, at his or her discretion, may direct the disputing parties to appear before him or her, in person or telephonically, for a prehearing conference, to be held before any official appeals hearing, for such purposes as:

(1) encouraging exploration of areas of agreement, including stipulations;

(2) facilitating settlement of the appeal; or

(3) discussion of the issues raised by the parties on the appeal.

(b) In the event that the issue, or issues scheduled for an appeals hearing are resolved at a prehearing conference, the committee chair shall report the settlement to the entire records committee at the next scheduled meeting for the purposes of creating a public record. Any stipulations shall be written and presented to the members of the records committee at the hearing.

KEY: government documents, state records committee, records appeal hearings
October 13, 2009 63G-2-502(2)(a)
Notice of Continuation September 23, 2009

R70. Agriculture and Food, Regulatory Services.
R70-440. Egg Products Inspection.
R70-440-1. Authority.

A. Promulgated under authority of Section 4-4-2.

B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

R70-440-2. Adopt by Reference.

Accordingly, the division adopts the egg products inspection standards and procedures as specified in Animal and Animal Products, 9 CFR Chapter III, Sub-Chapter I, Parts 590 and 592, January 1, 2004 edition, which is incorporated by reference within this rule.

KEY: food inspection
February 15, 2005 **4-4-2**
Notice of Continuation October 21, 2009

R70. Agriculture and Food, Regulatory Services.
R70-540. Food Establishment Registration.
R70-540-1. Authority.

Promulgated under authority of Subsection 4-5-9(1)(a).

R70-540-2. Purpose.

The purpose of this rule is to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply.

R70-540-3. Scope.

(1) This rule provides procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment as per Section 4-5-2(9).

(2) This rule:

(a) establishes definitions;

(b) requires an owner or operator of a food establishment to annually register with the department;

(c) categorizes food establishments;

(d) requires an inspection to determine compliance with R70-530 prior to granting a registration for new food establishments;

(e) establishes the requirements for: issuance, denial, conditional denial, revocation, suspension, and reinstatement for food establishments.

R70-540-4. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(a) "Department" means the Utah Department of Agriculture and Food, Division of Regulatory Services, or its representatives.

(b) "Farmer's Market" means a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.

(c) "Food processing" means blending, mixing, packaging, acidifying, curing, drying or dehydrating, dry packing, thermal processing, reduced-oxygen packaging, cooking, baking, heating, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, freezing, chilling, or otherwise manufacturing food products.

(d) "Food Processor" means an establishment that uses food processes indicated in R70-540-4(b). Examples include, but are not limited to, scratch bakery, dietary supplement manufacturer, candy factory, bottling plant, cannery, retail meat department, flour mill, ice plant, and low acid food processing establishment.

(e) "Inspection" means an on-site review of a food establishment conducted by the Utah Department of Agriculture and Food to ensure compliance with all applicable laws and rules.

(f) "Letter of Authorization" is a written document from the owner of an inspected food establishment that states that another entity, that is a separate business, is using their food establishment to process a food product. This letter of authorization is valid for one calendar year. This does not include employees of the food establishment or other businesses subcontracted by the food establishment that may temporarily use their facility for food processing activities.

(g) "Warehouse" means a business whose primary purpose is to store or hold food.

R70-540-5. Registration Categories.

(1) Each food establishment shall belong to only one of the four categories that have been established.

(2) A food establishment with multiple processing areas at the same physical address and under the same ownership will be evaluated and placed in a single category.

(3) A separate registration is required for each business owner operating under a letter of authorization.

(4) Grocery stores offering food as defined in Section 4-5-2(6) to consumers shall be categorized based on the following schedule:

TABLE I

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-50,000	2 or fewer food processing areas	large
(d)	greater than 50,000	more than 2 food processing areas	super

(5) Food or beverage manufacturing, processing, or packaging plants shall be categorized based on the following schedule:

TABLE II

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-20,000	2 or fewer food processing areas	large
(d)	greater than 20,000	more than 2 food processing areas	super

(6) Cold or dry storage warehouses or other types of food storage facilities shall be categorized based on the following schedule:

TABLE III

	Inspectable Square Footage	Category
(a)	Less than 1000	small
(b)	1000-5000	medium
(c)	1000-50,000	large
(d)	greater than 50,000	super

(7) A water vending machine owner or company shall be categorized as follows:

TABLE IV

	Number of Water Vending	Category
(a)	ten or fewer	small
(b)	eleven or more	medium

(c) as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d) when their primary purpose is to vend water.

(8) For mobile vendors, each vehicle or truck that sells prepackaged, potentially hazardous food items shall be categorized as a small.

(9) A temporary or seasonal business at an individual location shall be typed as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

(10) A farmer's market shall be exempt from the registration fee pursuant to Title 4-5(2)(9)(b).

(11) An establishment or operation calling itself a farmer's market, but which does not meet the definition of farmer's market in R70-540-4(b) shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

R70-540-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year for the upcoming calendar and all registrations expire on December 31 of each year.

R70-540-7. Registration.

(1) Registration fees are established according to Section 4-5-9. When the appropriate fee is not paid on or before December 31, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31 will be required to register appropriately. New facilities registering after November 1 will be registered for the remainder of that year and the following calendar year. This does not apply to seasonal food establishments.

(2) Fees paid are nonrefundable.

(3) When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered food establishment.

R70-540-8. Requirements.

(1) The prerequisites for operation are as follows:

(a) a person may not operate a food establishment without a valid registration.

(b) a new registration is required within 60 days when ownership changes.

(c) registration is non-transferable.

(d) the Department may seek administrative or judicial remedies to achieve compliance with the laws and rules if a person fails to have a valid registration to operate a food establishment.

(2) The owner or person-in-charge shall have the registration available for review upon request.

(3) The owner of a food establishment may display the current annual registration.

(4) The applicant should submit an application for a registration at least 30 calendar days before the date planned for opening a new or remodeled food establishment.

(5) The person desiring to operate a food establishment shall submit to the department a written application for a registration on a form provided by the Department.

(6) The qualifications and responsibilities of applicants are as follows:

(a) be an owner or representative of the food establishment;

(b) comply with the requirements of the Utah Food Protection Rule R70-530 and other applicable laws;

(c) agree to allow access to the food establishment during normal business hours as specified under Subsection 4-5-9(5)(a), provide required information; and

(d) pay the applicable registration fees at the time the application is submitted.

(7) The contents of the application shall include:

(a) the name, billing address, business telephone number, and signature of the person applying for the registration;

(b) the name of the food establishment, federal tax identification number, physical location address, billing address, type of establishment (i.e. retail grocery, food processor, or warehouse), number and types of food processes, square footage of the food establishment, and the number of employees;

(c) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(d) a statement signed by the applicant that attests to the accuracy of the information provided in the application and agrees to provide other information as required by the Department.

R70-540-9. Issuance.

(1) New, converted, or remodeled food establishments are required to submit plans as specified in the Utah Food Protection Rule R70-530-10, 10-2; the department shall issue a registration to the applicant after:

(a) a properly completed registration form is submitted;

(b) the required plans, specifications, and information are reviewed and approved; and

(c) a preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with the Utah Food Protection Rule R70-530.

(2) Registration for an existing food establishment will be renewed annually as stated in Subsection 4-5-9(2).

(3) The Department shall issue a registration to a new owner of an existing food establishment after:

(a) a properly completed application is submitted, reviewed, and approved;

(b) an inspection shows that the establishment is in compliance with the Utah Food Protection Rule R70-530 and;

(c) the appropriate fees are paid.

R70-540-10. Conditional Denial of Registration.

(1) If the registration is conditionally denied, the Department shall provide the applicant with a written notification within five business days that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

(2) Upon receipt of the notice of conditional denial, the applicant may:

(a) correct deficiencies and submit a description of the corrective actions; or

(b) submit written information to rebut the deficiencies described in the notice; or

(c) request an informal hearing, no later than ten business days after receipt of the notice.

(3) After receiving a written notification from the applicant stating that the deficiencies cited in the notice of conditional denial no longer exist, the Department shall:

(a) evaluate the applicant's corrective actions and supporting documentation or the written rebuttal;

(b) conduct an on-site re-inspection, if necessary, within three business days after receipt of written notification or correction;

(c) issue the registration when the corrective action or rebuttal is sufficient;

(d) deny the registration when the corrective action or rebuttal is not sufficient; or

(e) issue a written notice of denial to an applicant who fails to respond to the notice of conditional denial.

R70-540-11. Denial of Registration.

(1) If the registration is denied, the Department shall provide the applicant with a written notification that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

R70-540-12. Suspension of Registration.

(1) The Commissioner may suspend a registration:

(a) whenever an inspection of the food establishment reveals that the establishment has critical or repeat violations that remain uncorrected beyond the negotiated period of time.

(b) when there exists in a food establishment an immediate and substantial hazard to public health, unless the hazard is immediately corrected. The Commissioner may temporarily suspend the registration of the food establishment without prior notice, informal hearing, and order the food establishment immediately closed by issuing an order in writing. An immediate and substantial hazard to the public health means any condition, based upon inspection findings or other evidence that:

(i) there is an imminent threat of food-borne illness or

disease transmission; or

(ii) there is a hazardous condition including but not limited to critical control points without adequate control measures, contamination from wastewater, or non-potable water supply.

(c) in the event of a natural disaster, the Commissioner has the authority to order an establishment immediately closed if, in the opinion of the Commissioner the establishment cannot operate in a safe and sanitary manner. Conditions for immediate closure can include but are not limited to the following: No water supply, no electric power, flooding, or significant damage to the establishment. The Commissioner shall decide under what conditions the establishment will be allowed to reopen.

(d) whenever an owner or operator of a food establishment denies access to authorized personnel during normal business hours and does not allow them to conduct regulatory activities.

(2) The procedures for suspending the registration are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be suspended;

(i) the Commissioner shall state specific reasons for which the registration is to be suspended; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is suspended for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder no later than ten business days, after receipt of the notice;

(b) the establishment shall be closed and shall remain closed until the registration has been reinstated;

(c) a person whose registration has been suspended may request a re-inspection. Upon receipt of the request, the Department will conduct the inspection within three business days. The registration may be reinstated if the inspection shows the violation(s) that led to the suspension is corrected;

(3) the Department may suspend the operations for one processing area of an establishment without suspending the registration for the entire food establishment if the reason for suspension is isolated to that processing area and does not affect other areas of the establishment.

(4) if a food establishment voluntarily closes due to an immediate and substantial hazard to public health, the food establishment shall notify the Department prior to reopening.

(5) when a third administrative enforcement action is assessed against a registered establishment within any twelve-month period of time, the Department may initiate proceedings to suspend the registration.

(6) the registration shall be suspended and in effect until the conditions no longer exist or the Commissioner affirms, modifies, or rescinds the order as appropriate.

R70-540-13. Revocation.

(1) The Commissioner may revoke a registration whenever:

(a) the Commissioner is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the registration holder or person-in-charge; or

(b) the registration has been suspended more than three times within a twelve-month period.

(2) The procedures for revocation are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be revoked;

(i) the Commissioner shall state specific reasons for which the registration is to be revoked; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is revoked for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder, not later than ten business days after receipt of the notice.

(b) a person whose registration has been revoked may reapply thirty days after the date of revocation. Application fees for a new registration will apply.

R70-540-14. Exemptions.

For the purpose of granting registration fee exemptions the following applies:

(1) Food establishments that distribute food provisions directly to consumers without monetary consideration exchange will be exempt from food registration fees.

(a) These facilities may not conduct any type of food processing or reconditioning.

(b) Inspections will be conducted by UDAF to ensure food safety and the food establishments will be required to register annually with UDAF.

(2) Warehouses whose sole purpose is to distribute directly to food establishments that distribute food provisions directly to consumers without monetary consideration exchange may be exempt from registration fees.

KEY: food inspection

December 14, 2007	**4-5-2(5)**
Notice of Continuation October 21, 2009	**4-5-2(9)(b)(ii)**
	4-5-9(1)(a)

R70. Agriculture and Food, Regulatory Services.
R70-960. Weights and Measures Fee Registration.
R70-960-1. Authority.

Promulgated under authority of Section 4-9-15.

R70-960-2. Definitions of Terms.

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E. P. C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

R70-960-3. Application.

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

R70-960-4. Device Registration.

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

R70-960-5. Device.

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

R70-960-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

R70-960-7. Registration Certificate Displayed.

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices or produce the certification for review upon request.

R70-960-8. Registration.

A. Registration fees are established according with Section 4-9-15(1)(h)(i). When the appropriate fee is not paid on or before January 1, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

KEY: inspections
November 2, 2004 4-9-15
Notice of Continuation October 21, 2009

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(18) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (5)(c)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from

or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (5)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (5)(a), (b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 32A-12-212(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32A-12-212(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (1)(b) and (1)(c) is $20.00.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee

or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than

once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X X			
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days
Minor			
1st	X X		
2nd	X	to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:
(i) prior warnings about compliance problems;
(ii) prior violation history;
(iii) lack of written policies governing employee conduct;
(iv) multiple violations during the course of the investigation;
(v) efforts to conceal a violation;
(vi) intentional nature of the violation;
(vii) the violation involved more than one patron or employee;
(viii) the violation involved a minor and, if so, the age of the minor; and
(ix) whether the violation resulted in injury or death.
(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (2008 edition) and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.
(1) General Provisions.
(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.
(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.
(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63G-4-502.
(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.
(e) Penalties.
(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.
(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.
(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.
(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.
(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:
(i) Service personally or by certified mail upon any employee working in the respondent's premises; or
(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or
(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.
(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.
(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.
(j) Presiding Officers.
(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.
(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.
(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.
(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.
(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;
(B) clarify issues;
(C) simplify the evidence;
(D) expedite the proceedings; or
(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63G-4-102(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;
(B) The name of the respondent;
(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;
(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and
(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.
(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;
(B) The name of the respondent;
(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);
(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or
(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;
(B) The department's case number;
(C) The name of the adjudicative proceeding, "DABC vs.

";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63G-4-202 and -203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a

copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and, 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63G-4-401, -402, -404, and -405 and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402, -404, and -405, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal

adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written

objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63G-4-403, -404, -405.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department

staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(45) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(53) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system"

means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63G-3-201(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive

director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference

the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(29), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative

to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63G-3-201 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and

beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status")

items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" are as defined in 32A-1-105(28).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon

which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1- 105(54).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(55).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or social club.

(b) A tavern or social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32A-1-111, 32A-2-101(1)(b),32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32A-1-701 through 704 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a fingerprint card or

provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32A-1-806(2)(c) and (d) and 32A-1-807 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32A-1-804, effective October 1, 2008, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32A-1-804 to -806.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the

product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32A-1-805(6):

(i) the department may revoke any label and packaging approved by the department prior to October 1, 2008, that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32A-1-806, effective October 1, 2008, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32A-1-806, effective October 1, 2008, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32A-1-106(9) that gives the commission authority to hold special commission meetings; and 32A-1-107(1) that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

KEY: alcoholic beverages

October 27, 2009	**32A-1-106(9)**
Notice of Continuation August 31, 2006	**32A-1-107**
	32A-1-119(5)(c)
	32A-1-702
	32-1-703
	32A-1-704
	32A-1-807
	32A-3-103(1)(a)
	32A-4-103(1)(a)
	32A-4-106(1)(a)
	32A-4-203(1)(a)
	32A-4-304(1)(a)
	32A-4-307(1)(a)
	32A-4-401(1)(a)
	32A-5-103(1)(a)
	32A-6-103(2)(a)
	32A-7-103(2)(a)
	32A-7-106(5)
	32A-8-103(1)(a)
	32A-8-503(1)(a)
	32A-9-103(1)(a)
	32A-10-203(1)(a)
	32A-10-206(14)
	32A-10-303(1)(a)
	32A-10-306(5)
	32A-11-103(1)(a)
	32A-12-212(1)(b) and ©

R131. Capitol Preservation Board (State), Administration.
R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R131-13-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

R131-13-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

R131-13-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" is as defined in Subsection 63C-9-403(1)(a) and includes only those employees that live and work in the state of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than the use of the term employee for purposes of state of Utah Workers' Compensation laws along with their dependents.

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

R131-13-4. Applicability of Rule.

(1) Except as provided in R131-13-4(2) below, R131-13 applies to all contracts entered into by the Board or the executive director, or on behalf of the Board, on or after July 1, 2009, if:

(a) the contract is for design and/or construction; and

(b)(i) the prime contract is in the amount of $1,500,000 or greater; or

(ii) a subcontract, at any tier, is in the amount of $750,000 or greater.

(2) R131-13 does not apply if:

(a) the application of R131-13 jeopardizes the receipt of federal funds;

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

(c) the contract is an emergency procurement.

(3) R131-13 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

R131-13-5. Contractor to Comply with Section 63C-9-403.

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure to comply with R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

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

R131-13-7. Requirements and Procedures a Contractor Must Follow.

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, including consultants, designers and others under contract with the Board or the executive director that is subject to the requirements of R131-13 no later than the time of execution of the contract:

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

(b) the contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors, including subconsultants, at any tier that are subject to the requirements of R131-13.

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

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63C-9-403(1)(c)(i) and (iii) is met by the contractor if the contractor provides the executive director with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer.

For purposes of R131-13-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

(a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, which details of the plan are provided on the website of the Division at http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf; or

(b) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under R131-13-7(3)(a) above and employer premium contributions as required by statute.

(4) The health insurance must be available upon the first of the month following the initial ninety days from the beginning of employment.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to R131-13 must demonstrate compliance with R131-13 in any annual submittal. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of R131-13.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to R131-13 must demonstrate compliance with R131-13 for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of R131-13.

(7) Notwithstanding any prequalification process, any

contract subject to R131-13 shall contain a provision requiring compliance with R131-13 from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be Imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of R131-13 may include:

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

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

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

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

(c) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who violates the provisions of R131-13 shall be liable to the employee for health care costs not covered by insurance.

R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts
October 8, 2009 **63C-9-403**
63C-9-301(3)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-16a. Optometry Practice Act Rule.
R156-16a-101. Title.

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

R156-16a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 16a, as used in Title 58, Chapters 1 and 16a or this rule:

(1) "Practitioner" means any person or individual licensed in this state as a physician and surgeon, osteopathic physician and surgeon, physician assistant, nurse practitioner or an optometric physician.

(2) "Verbal order" as used in Subsection 58-16a-102(3)(a), means that the attending optometrist ordered the contact lens prescription by telephone, or that an individual acting under the supervision and direction of the attending optometrist ordered the contact lens prescription by telephone.

R156-16a-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 16a.

R156-16a-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.

R156-16a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-16a-302(1)(e), the course of study satisfactory to the division and the board shall consist of:

(1) 100 clock hours of General and Ocular Pharmacology in a recognized accredited optometry school; and

(2) one of the following courses in Emergency Medical Care:

(a) Cardiopulmonary Resuscitation (CPR); or

(b) Basic Life Support (BCLS).

R156-16a-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-16a-302(1)(f), the examinations which must be successfully passed by applicants for licensure as an optometrist are:

(1) the National Board of Examiners in Optometry examinations to include the following sections:

(a) Part I (Basic Science);

(b) Part II (Clinical Science and the Treatment and Management of Ocular Disease (TMOD));

(c) Part III (Patient Care); and

(d) The stand-alone TMOD if licensed prior to 1993.

R156-16a-302c. Licensure by Endorsement.

In accordance with Subsection 58-16a-302(2)(b), optometry practice that is "consistent with the legal practice of optometry in this state" means that the licensed optometrist has lawfully engaged in therapeutic optometry for not less than 3200 hours in the past two years.

R156-16a-304. Continuing Education.

In accordance with Section 58-16a-304, the standards for the 30 hours of qualified continuing professional education are the following.

(1) With the exception of Subsections (2) and (3), only courses approved by the Council on Optometric Professional Education (COPE) or optometry related courses approved by the Council on Medical Education will be accepted.

(2) A maximum of two hours of continuing professional education will be accepted for courses in certification or recertification in cardiopulmonary resuscitation (CPR) or Basic Life Support (BCLS).

(3) A maximum of two hours of continuing professional education may come from the Division of Occupational and Professional Licensing for training regarding the use of the Utah Controlled Substance Database.

(4) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year renewal cycle will be prorated from the date of licensure.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year renewal cycle to which the records pertain.

(6) Hours in excess of the 30 hours obtained in one renewal cycle cannot be transferred to the next renewal cycle.

(7) A licensee who has a serious health problem or who has left the United States for an extended period of time which may prevent the licensee from being able to comply with the professional education requirements established under this section may be excused from completing some or all of the requirements established under this section by submitting a written request to the Division and receiving Division approval.

R156-16a-307. Licenses Held on Effective Date - Scope of Practice Defined.

(1) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist without certification on May 5, 1997 is clarified as follows.

(a) An optometrist without certification:

(i) shall not engage in the treatment of eye disease or injury, the administration or prescribing of diagnostic or therapeutic prescription drugs, or over the counter medicines, the removal of any foreign body from the eye, or treatment of any condition of the eye except those which can be corrected by the use of lenses, prisms, contact lenses, or ocular exercises; and

(ii) may use, dispense, or recommend over-the-counter contact lens solutions.

(iii) upon finding any eye disease or injury requiring therapeutic treatment, shall refer the patient to a qualified practitioner.

(2) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist with diagnostic certification on May 5, 1997 is clarified as follows.

(a) An optometrist with diagnostic certification:

(i) shall not engage in the treatment of eye disease or injury, the administration or prescribing of therapeutic prescription drugs, or therapeutic over the counter medicines, the removal of any foreign body from the eye, or treatment of any condition of the eye except those which can be corrected by the use of lenses, prisms, contact lenses, or ocular exercises;

(ii) may use, dispense, or recommend over-the-counter contact lens solutions;

(iii) may administer diagnostic prescription drugs or over the counter medicines to include the categories of anesthetics, myotics, mydriatrics, or cyclopegics; and

(iv) upon finding any eye disease or injury requiring therapeutic treatment, shall refer the patient to a qualified practitioner.

(3) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist with therapeutic certification on May 5, 1997 shall be consistent with the scope of practice set forth in Section 58-16a-601.

R156-16a-502. Unprofessional Conduct.

In addition to Title 58, Chapters 1 and 16a, and in accordance with Subsection 58-1-203(5), unprofessional

conduct is further defined to include:

(1) engaging in optometry beyond the scope of practice pursuant to Section R156-16a-307 and Section 58-16a-601.

KEY: optometrists, licensing
October 22, 2009 58-16a-101
Notice of Continuation April 26, 2007 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rule.
R156-28-101. Title.

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

R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or this rule:

(1) "In association with licensed veterinarians", as used in Subsection 58-28-307(6), means the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

(2) "NBEC" means the National Board Examination Committee of the American Veterinary Medical Association.

(3) "Patient" means any animal receiving veterinarian services.

(4) "Practice of veterinary medicine, surgery, and dentistry" as defined in Subsection 58-28-102(11) does not include the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-28-502.

R156-28-103. 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 28.

R156-28-104. 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.

R156-28-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall comply with one of the following:

(a) an official transcript demonstrating that the applicant has graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of the applicant's graduation; or

(b) if the applicant received a veterinary degree in a foreign country, demonstrate that the applicant's foreign education is equivalent to the requirements of Subsection R156-28-302a(1)(a) by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards (AAVSB) Program for Assessment of Veterinary Education Equivalence (PAVE).

(2) Each applicant for licensure as a veterinarian intern shall demonstrate that the applicant has met the education provided in Subsection R156-28-302a(1); however, if the applicant has graduated, but the educational institution has not yet posted the degree on the official transcript, the applicant may submit the official transcript together with a notarized letter from the dean or registrar of the educational institution, which certifies that the applicant has obtained the degree but it is not yet posted to the official transcript.

R156-28-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the experience requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall:

(a) complete 1000 hours of experience while licensed as a veterinarian intern under the supervision of a licensed veterinarian in accordance with the following.

(i) Experience shall be earned in not less than six months and completed within two years of the date of the application.

(ii) Experience in the following settings is not acceptable to fulfill this experience requirement:

(A) temporary employment experiences of less than eight weeks in duration; or

(B) part time experience of less than 20 hours per week.

(iii) Experience completed while employed as unlicensed assistive personnel is not acceptable to fulfill this experience requirement.

(iv) If the experience is completed in a jurisdiction outside of Utah which does not issue licensure as a veterinarian or as a veterinarian intern or comparable licenses or was completed in a setting which does not require licensure, the applicant shall demonstrate that the experience was:

(A) lawfully obtained;

(B) obtained after the applicant met the education requirement specified in Section R156-28-302a;

(C) supervised by a competent supervisor who was licensed as a veterinarian or exempted from licensure, except if the supervisor was exempted from licensure, the applicant must demonstrate the qualifications and competence of the supervisor; and

(D) comparable to experience that would be obtained in a standard veterinarian practice setting in Utah.

(v) Supervision of the intern by the licensed veterinarian may be obtained by "indirect supervision" as defined in Section 58-28-102 provided that the supervisor supplements the indirect supervision with routine face to face contact as the licensed veterinarian deems appropriate using professional judgment.

(vi) Each applicant shall demonstrate completion of the experience required by submitting a verification of experience signed by the applicant and the applicant's supervising veterinarian on forms approved by the Division.

(vii) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(b) In accordance with Subsections 58-37-6(1)(a), 58-37-6(5)(b)(i) and R156-37-305(1), a veterinary intern is not eligible to obtain a controlled substance license during the internship.

R156-28-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-302(1)(b) are defined, clarified, or established as follows:

(1) Applicants who passed the examinations listed in this subsection prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

(b) the Clinical Competency Test (CCT) of the NBEC with a minimum passing score as determined by the NBEC.

(2) Applicants who did not pass the examinations listed in

Subsection (1) prior to May 1, 2000 shall submit documentation showing they passed the North American Veterinarian Licensing Examination (NAVLE) with a score as determined by the NBEC.

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

(a) an application for approval to sit for the NAVLE examination;

(b) the application fee; and

(c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the dean or registrar of the educational institution confirming the applicant is a student in good standing and will graduate with the next graduating class.

R156-28-303. 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 28 is established by rule in Section R156-1-308a(1).

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

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-304. Continuing Professional Education.

In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. The continuing professional education requirement shall comply with the following criteria.

(1) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing 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 veterinarian;

(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.

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

(a) Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:

(i) the American Veterinary Medical Association;

(ii) the Utah Veterinary Medical Association;

(iii) the American Animal Hospital Association;

(iv) the American Association of Equine Practitioners;

(v) the American Association of Bovine Practitioners;

(vi) certifying boards recognized by the AVMA;

(vii) the Western Veterinary Conference; or

(viii) other state veterinary medical associations or state licensing boards; or

(ix) the Registry of Continuing Education (RACE) of the AASVB.

(b) No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author.

(c) No more than six continuing professional education hours may be in practice management courses.

(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.

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

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

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting unlicensed assistive personnel to perform duties that the individual is not competent by education, training or experience to perform; and

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A. of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.

R156-28-503. Minimum Standards of Practice.

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

(a) client's name, address and phone number, if telephone

is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) A veterinarian shall:

(a) maintain veterinary medical records under Subsection (1) above so that any veterinarian coming into a veterinary practice may, by reading the veterinary medical record of a particular animal, be able to proceed with the proper care and treatment of the animal; and

(b) maintain veterinary medical records under Subsection (1) above for a minimum of five years from the date that the animal was last treated by the veterinarian.

(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

KEY: veterinary medicine, licensing, veterinarian
October 22, 2009 58-1-106(1)(a)
Notice of Continuation February 1, 2007 58-1-202(1)(a)
58-28-101

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rule.
R156-55b-101. Title.

This rule is known as the "Electricians Licensing Rule".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(3) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(5) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-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 55.

R156-55b-104. Organization - Relationship to Rule R156-1.

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

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings,

conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations which are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Upon completing the requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b, the applicant shall obtain approval from the Division permitting the applicant to take the examination.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4) If an applicant fails one or more of the parts of the examination, the applicant shall retake the part or parts of the examination failed no more than two additional times, with at least 25 days between tests.

(5) If an applicant does not pass the failed part of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, as provided in Subsection (4), the application shall be denied.

R156-55b-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 55 is established by rule in Section R156-1-308a.

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

R156-55b-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of master, journeyman, residential master, residential journeyman and apprentice electrician licenses issued under Title 58, Chapter 55.

(2) Continuing education shall consist of 16 hours of course work in each preceding two year period of licensure or expiration of licensure.

(3) A minimum of eight hours shall be on the current edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b).

(4) The licensee is responsible for maintaining competent records of completed qualified continuing education for a period of four years after the close of the two year renewal period to which the records pertain.

(5) The standards for qualified continuing education are as follows:

(a) courses and instructors shall be approved by the Electricians Licensing Board;

(b) the content must be relevant to the electrical trade and consistent with the laws and rules of this state;

(c) an instructor must either be currently teaching or have taught courses related to the electrical trade within the preceding two years for one of the following:

(i) a trade school, college or university whose electrical program is approved in accordance with Subsections R156-55b-302a(1)(a) and (3);

(ii) a professional association or organization representing licensed electricians whose program objectives relate to the electrical trade;

(iii) the licensing agency of another state;

(iv) a federal or other Utah agency or another state's agency; or

(v) the Division's Building Codes Education program.

(6) Electricians Licensing Board members, acting in their official capacity as a board member, may attend any continuing education course at no charge, at any time, to monitor the quality of instruction.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the division to insure that the work installed by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship. In the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

(4) For the purposes of Subsections 58-55-102(28), 58-55-501(12) and 58-55-302(3)(j), one of the following shall apply:

(a) the supervisor and apprentice employees are employees of the same electrical contractor;

(b) the supervisor and apprentice employees providing work or supervision of work for another electrical contractor are considered as employees of the electrical contractor on the project; or

(c) the employees of a licensed professional organization who provide workers under a contract with an electrical contractor are considered as employees of the electrical contractor with regard to the work performed on the project.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure of a licensee to carry a copy of a current license at all times when performing electrical work;

(2) failure of an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(3) failure of a licensee to provide proof of completed continuing education within 30 days of the Division's request.

KEY: occupational licensing, licensing, contractors,

electricians
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Notice of Continuation November 8, 2006 **58-1-202(1)(a)**
58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rule.
R156-60a-101. Title.

This rule is known as the "Social Worker Licensing Act Rule".

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 this rule:

(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.

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.

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(4)(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 CSW 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 R156-1-308a(1).

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

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 October 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;

(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(v) the Division of Occupational and Professional Licensing; 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 the licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section 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-302c 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 Section R156-60a-302c and Subsection 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 even 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 Division in collaboration with 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

October 22, 2009	**58-60-201**
Notice of Continuation August 31, 2009	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-75. Genetic Counselors Licensing Act Rule.
R156-75-101. Title.

This rule is known as the "Genetic Counselors Licensing Act Rule."

R156-75-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in this rule:

(1) "Active candidate status", as used in Subsection R156-75-302b(1), describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in Subsection R156-75-302b(2), means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-75-304.

R156-75-103. 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 75.

R156-75-104. 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.

R156-75-302b. Qualifications for Licensure - Temporary License.

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all the qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the ABGC.

(2) An individual practicing under the authority of a temporary license must practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) Before May 1, 2010, a temporary license may be issued for a period of up to 42 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license.

(4) Beginning May 1, 2010, a temporary license may be issued for a period of up to 15 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license.

(5) A temporary license will not be issued if the applicant has failed the ABGC certification examination more than once.

(6) A temporary license shall expire upon the earliest of one of the following:

(a) issuance of full licensure;

(b) 30 days after failing the certification exam; or

(c) the date printed on the temporary license.

R156-75-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 75 is established by rule in Section R156-1-308a(1).

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

R156-75-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of 50 hours (5 CEU's) in each preceding two year licensing cycle and must be approved for recertification purposes by the ABGC.

(3) 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.

(4) A licensee who documents circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section may apply to be excused from the requirement for a period of up to two years. It is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

KEY: licensing, occupational licensing, genetic counselors
October 22, 2009 **58-1-106(1)(a)**
Notice of Continuation January 9, 2007 **58-1-202(1)(a)**
58-75-302(2)
58-75-303(2)

R156. Commerce, Occupational and Professional Licensing.
R156-77. Direct-Entry Midwife Act Rule.
R156-77-101. Title.

This rule is known as the "Direct-Entry Midwife Act Rule."

R156-77-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 77, as used in Title 58, Chapter 77 or this rule:

(1) "Accredited school", as used in this rule, includes any midwifery school that has been granted pre-accredited status by MEAC.

(2) "Apgar score", as used in Section R156-77-601, means an index used to evaluate the condition of a newborn based on a rating of 0, 1, or 2 for each of the five characteristics of color, heart rate, response to stimulation of the sole of the foot, muscle tone, and respiration with 10 being a perfect score.

(3) "Appropriate provider", as used in Sections R156-77-601 and 602, means a licensed provider who is an appropriate contact person based on the provider's level of education and scope of practice.

(4) "Approved continuing education", as used in Subsection R156-77-303(3)(c), means:

(a) continuing education that has been approved by a nationally recognized professional organization that approves health related continuing education;

(b) a course offered by a post-secondary education institution that is accredited by an accrediting board recognized by the U.S. Department of Education, an MEAC approved midwifery program or accredited midwifery school, or an MEAC approved program or course; or

(c) continuing education that is sponsored or presented by MANA or any subgroup thereof, a government agency, a recognized direct-entry midwifery or health care association.

(5) "Collaborate", as used in Section R156-77-601, means the process by which an LDEM and another licensed health care provider jointly manage a specific condition of a client according to a mutually agreed-upon plan of care. The LDEM continues midwifery management of the client and may follow through with the medical management as agreed upon with the provider.

(6) "Consultation", as used in Section R156-77-601, means the process by which the LDEM discusses client status with an appropriate licensed health care provider by phone, written note, or in person. The provider may give a recommendation for management, but does not assume the management of the client.

(7) "CPR", as used in this rule, means cardiopulmonary resuscitation.

(8) "C-section", as used in this rule, means a cesarean section.

(9) "LDEM", as used in this rule, means a licensed direct entry midwife licensed under Title 58, Chapter 77.

(10) "LDEM Outcome Database", as used in Section R156-77-604, means a web based application created by the Division to collect data regarding the outcome of pregnancies and deliveries managed by an LDEM.

(11) "MANA", as used in this rule, means the Midwives Alliance of North America.

(12) "MEAC", as used in this rule, means the Midwifery Education Accreditation Council.

(13) "Midwifery Care", as used in this rule, has the same meaning as the practice of direct-entry midwifery as defined in Subsection 58-77-102(8).

(14) "NARM", as used in this rule, means the North American Registry of Midwives.

(15) "Refer", as used in Section R156-77-601, means the process by which an LDEM directs the client to an appropriate licensed health care provider for management of a specific condition. The LDEM continues midwifery management of the client.

(16) "TOLAC", as used in Section R156-77-602, means a trial of labor after cesarean section.

(17) "Transfer", as used in Section R156-77-601, means the process by which an LDEM relinquishes management of a client to an appropriate licensed health care provider. The LDEM may provide on-going support services as appropriate.

(18) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 77, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-77-502.

(19) "VBAC", as used in this rule, means a vaginal birth after cesarean section.

(20) "Weeks gestation", as used in this rule, means the age of a pregnancy using accepted pregnancy dating criteria such as menstrual or ultrasound dating. A gestation week starts at the beginning of that week; therefore, 36 weeks gestation is the start of the 36th week of pregnancy.

R156-77-103. 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 77.

R156-77-104. 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.

R156-77-302a. Qualifications for licensure - Application Requirements.

In accordance with Subsections 58-1-203(1), 58-1-301(3), and 58-77-302(5), the application requirements for licensure in Section 58-77-302 are defined herein.

(1) An applicant for licensure as an LDEM must submit documentation of current CPR certification for health care providers, for both adults and infants, from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

(2) An applicant for licensure as an LDEM must submit documentation of current newborn or neonatal resuscitation certification from one of the following organizations:

(a) American Academy of Pediatrics;

(b) American Heart Association; or

(c) a MEAC approved program or accredited school.

R156-77-302b. Qualifications for licensure - Education Requirements.

In accordance with Subsections 58-1-203(1)(b), 58-1-301(3), and 58-77-302(6), the pharmacology course requirement for licensure in Subsection 58-77-302(6) is defined herein. The course must be:

(1) offered by a post-secondary educational institution that is accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education, a MEAC approved midwifery program or accredited midwifery school, or be a MEAC approved program or course; and

(2) at least eight clock hours in length and include basic pharmacotherapeutic principles and administration of medications including the drugs listed in Subsections 58-77-102(8)(f)(i) through (ix); or

(3) a general pharmacology course of at least 20 clock hours in length from a health-related course of study.

R156-77-303. 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 77 is established by rule in Subsection R156-1-308a(1).

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

(3) Each applicant for renewal shall comply with the following:

(a) submit documentation of holding a current Certified Professional Midwife certificate in good standing with NARM;

(b) submit documentation of current certifications in adult and infant CPR, and newborn resuscitation that meets the criteria established in R156-77-302a; and

(c) complete at least two clock hours of approved continuing education in intrapartum fetal monitoring during each preceding two year licensure cycle which may be part of the hours required in Subsection (a) to maintain certification provided the hours meet the requirements established by NARM.

(4) A licensee must be able to document completion of the continuing education hours upon the request of the Division. Such documentation shall be retained until the next licensure renewal cycle.

R156-77-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure to practice in accordance with the knowledge, clinical skills, and judgments described in the MANA Core Competencies for Basic Midwifery Practice (1994), which is hereby adopted and incorporated by reference; and

(2) failing as a midwife to follow the MANA Standards and Qualifications for the Art and Practice of Midwifery (2005), which is hereby adopted and incorporated by reference.

R156-77-601. Standards of Practice.

Except as provided in Subsection 58-77-601(3)(b), and in accordance with Subsection 58-77-601(2), the standards and circumstances that require an LDEM to recommend and facilitate consultation, collaboration, referral, transfer, or mandatory transfer of client care are established herein. These standards are at a minimum level and are hierarchical in nature. If the standard requires at least consultation for a condition, an LDEM may choose to collaborate, refer, or transfer the care of the client.

(1) Consultation:

(a) antepartum:

(i) suspected intrauterine growth restriction;

(ii) severe vomiting unresponsive to LDEM treatment;

(iii) pain unrelated to common discomforts of pregnancy;

(iv) presence of condylomata that may obstruct delivery;

(v) anemia unresponsive to LDEM treatment;

(vi) history of genital herpes;

(vii) suspected or confirmed fetal demise after 14 weeks gestation;

(viii) suspected multiple gestation;

(ix) confirmed chromosomal or genetic aberrations;

(x) hepatitis C;

(xi) prior c-section without a second trimester ultrasound to determine the location of placental implantation; and

(xii) any other condition in the judgment of the LDEM requires consultation.

(2) Mandatory Consultation:

(a) incomplete miscarriage after 14 weeks gestation;

(b) failure to deliver by 42 weeks gestation;

(c) a fetus in the breech position after 36 weeks gestation;

(d) any sign or symptom of:

(i) placenta previa;

(ii) deep vein thrombosis or pulmonary embolus; or

(iii) vaginal bleeding after 20 weeks gestation, in a woman with a history of a c-section who has not had an ultrasound performed;

(e) Rh isoimmunization or other red blood cell isoimmunization known to cause erythroblastasis fetalis; or

(f) any other condition or symptom in the judgment of the LDEM that may place the health of the pregnant woman or unborn child at unreasonable risk.

(3) Collaborate:

(a) antepartum:

(i) infection not responsive to LDEM treatment;

(ii) seizure disorder affecting the pregnancy;

(iii) history of cervical incompetence with surgical therapy;

(iv) increase in blood pressure with a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, no more than trace proteinurea or other evidence of preeclampsia; and

(vi) any other condition in the judgment of the LDEM requires collaboration;

(b) postpartum:

(i) infection not responsive to LDEM treatment; and

(ii) any other condition in the judgment of the LDEM requires collaboration.

(4) Refer:

(a) antepartum:

(i) thyroid disease;

(ii) changes in the breasts not related to pregnancy or lactation;

(iii) severe psychiatric illness responsive to treatment;

(iv) heart disease that has been determined by a cardiologist to have potential to affect or to be affected by pregnancy, labor, or delivery; and

(v) any other condition in the judgment of the LDEM requires referral;

(b) postpartum:

(i) bladder dysfunction;

(ii) severe depression; and

(iii) any other condition in the judgment of the LDEM requires referral;

(c) newborn:

(i) birth injury requiring on-going care;

(ii) minor congenital anomaly;

(iii) jaundice beyond physiologic levels;

(iv) loss of 15% of birth weight;

(v) inability to suck or feed; and

(vi) any other condition in the judgment of the LDEM requires referral.

(5) Transfer, however may be waived in accordance with Subsection 58-77-601(3)(b):

(a) antepartum:

(i) current drug or alcohol abuse;

(ii) current diagnosis of cancer;

(iii) persistent oligohydramnios not responsive to LDEM treatment;

(iv) confirmed intrauterine growth restriction;

(v) prior c-section with unknown uterine incision type provided a reasonable effort has been made to determine the uterine scar type and the client has signed an informed consent that meets the standards established in Section R156-77-602;

(vi) history of preterm delivery less than 34 weeks gestation;

(vii) history of severe postpartum bleeding;

(viii) primary genital herpes outbreak;

(ix) increase in blood pressure with a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, and 1+ to 2+ proteinurea confirmed by a 24 hour urine collection of greater than 300 mg of protein; and

(x) any other condition in the judgment of the LDEM may require transfer;

(b) intrapartum:

(i) visible genital lesions suspicious of herpes virus infection;

(ii) severe hypertension defined as a sustained diastolic blood pressure of greater than 110 mm or a systolic pressure of greater than 160 mm;

(iii) excessive vomiting, dehydration, acidosis, or exhaustion unresponsive to LDEM treatment; and

(iv) any other condition in the judgment of the LDEM may require transfer;

(c) postpartum:

(i) retained placenta; and

(ii) any other condition in the judgment of the LDEM may require transfer;

(d) newborn:

(i) gestational age assessment less than 36 weeks gestation;

(ii) major congenital anomaly not diagnosed prenatally;

(iii) persistent hyperthermia or hypothermia unresponsive to LDEM treatment; and

(iv) any other condition in the judgment of the LDEM may require transfer.

(6) Mandatory transfer:

(a) antepartum:

(i) severe preeclampsia or severe pregnancy-induced hypertension as evidenced by:

(A) a systolic pressure greater than 160mm or a diastolic pressure greater than 110mm in two readings at least six hours apart, or 3+ to 4+ proteinurea, or greater than 5gms of protein in a 24 hour urine collection; or

(B) a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, at least 1+ proteinurea, and one or more of the following:

(1) epigastric pain;

(2) headache;

(3) visual disturbances; or

(4) decreased fetal movement;

(ii) eclampsia or hemolysis, elevated liver enzymes, and low platelets syndrome (HELLP);

(iii) documented platelet count less than 75,000 platelets per mm^3 of blood;

(iv) placenta previa after 27 weeks of gestation;

(v) confirmed ectopic pregnancy;

(vi) severe psychiatric illness non-responsive to treatment;

(vii) human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS);

(viii) diagnosed deep vein thrombosis or pulmonary embolism;

(ix) multiple gestation;

(x) no onset of labor by 43 weeks gestation;

(xi) more than two prior c-sections;

(xii) prior c-section with a known uterine classical, inverted T or J incision, or an extension of an incision into the upper uterine segment;

(xiii) prior c-section without an ultrasound that rules out placental implantation over the uterine scar obtained no later than 35 weeks gestation or prior to commencement of care if the care is sought after 35 weeks gestation;

(xiv) prior c-section without a signed informed consent document meeting the standards established in Section R156-77-602;

(xv) prior c-section with a gestation greater than 42 weeks gestation;

(xvi) Rh isoimmunization or other red blood cell isoimmunization known to cause erythroblastasis fetalis, with an antibody titre of greater than 1:8;

(xvii) insulin-dependent diabetes;

(xviii) significant vaginal bleeding after 20 weeks gestation not consistent with normal pregnancy and posing a continuing risk to mother or baby; and

(xiv) any other condition in the judgment of the LDEM that could place the life or long-term health of the pregnant woman or unborn child at risk;

(b) intrapartum:

(i) signs of uterine rupture;

(ii) presentation(s) not compatible with spontaneous vaginal delivery;

(iii) fetus in breech presentation during labor unless delivery is imminent;

(iv) progressive labor prior to 37 weeks gestation except miscarriages, confirmed fetal death, or congenital anomalies incompatible with life;

(v) prolapsed umbilical cord unless birth is imminent;

(vi) clinically significant abdominal pain inconsistent with normal labor;

(vii) seizure;

(viii) undiagnosed multiple gestation, unless delivery if imminent;

(ix) suspected chorioamnionitis;

(x) prior c-section with cervical dilation progress in the current labor of less than one centimeter in three hours once labor is active;

(xi) non-reassuring fetal heart pattern indicative of fetal distress that does not immediately respond to treatment by the LDEM, unless delivery is imminent;

(xii) moderate thick, or particulate meconium in the amniotic fluid unless delivery is imminent;

(xiii) failure to deliver after three hours of pushing unless delivery is imminent; or

(xiv) any other condition in the judgment of the LDEM that would place the life or long-term health of the pregnant woman or unborn child at significant risk if not acted upon immediately;

(c) postpartum:

(i) uncontrolled hemorrhage;

(ii) maternal shock that is unresponsive to LDEM treatment;

(iii) severe psychiatric illness non-responsive to treatment;

(iv) signs of deep vein thrombosis or pulmonary embolism; and

(v) any other condition in the judgment of the LDEM that could place the life or long-term health of the mother or infant at significant risk if not acted upon immediately;

(d) newborn:

(i) non-transient respiratory distress;

(ii) non-transient pallor or central cyanosis;

(iii) Apgar score at ten minutes of less than six;

(iv) low heart rate of less than 60 beats per minute after one complete neonatal resuscitation cycle;

(v) absent heart rate except with confirmed fetal death or congenital anomalies incompatible with life, or shoulder dystocia resulting in death;

(vi) hemorrhage;

(vii) seizure;

(viii) persistent hypertonia, lethargy, flaccidity or irritability, or jitteriness;

(ix) inability to urinate or pass meconium within the first 48 hours of life; and

(x) any other condition in the judgment of the LDEM must be transferred.

R156-77-602. Informed Consent.

In addition to the standards for informed consent established in Subsection 58-77-601(1)(b), an informed consent for a client with a previous c-section, must include the following information about a VBAC:

(1) TOLAC is associated with the risk of uterine rupture. Uterine rupture can cause brain damage or death of the baby and result in serious hemorrhage or hysterectomy in the mother.

(2) VBAC poses more medical risks to the baby than a scheduled repeat c-section.

(3) Repeat c-section poses more medical risks to the mother than VBAC.

(4) C-section after a failed TOLAC is associated with more risks than a c-section done before labor has begun.

(5) If a complication occurs from a TOLAC outside of a hospital setting, the risk to mother and baby may be higher due to the inherent delay in obtaining access to hospital care.

(6) Multiple c-sections are associated with, but not limited to, increased risks due to abnormal placental implantation, hermorrhage requiring hysterectomy, and other surgical and postoperative complications.

(7) The risks associated with TOLAC after two c-sections are greater than those after one c-section.

(8) Risks associated with TOLAC when the type of uterine scar is unknown are greater than when the uterine scar is known to be low transverse.

(9) A 2004 national birth center study revealed women who attempt TOLAC in a birth center setting have an overall transfer rate of 24%, and a vaginal delivery rate of 87%.

(10) A woman with no previous vaginal birth and two previous c-sections for documented failure to progress, has a very low vaginal delivery success rate.

R156-77-603. Procedures for the Termination of Midwifery Care.

(1) The procedure to terminate midwifery care for a client who has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer is established herein:

(a) provide no fewer than three business days written notice, unless an emergency, during which the LDEM shall continue to provide midwifery care, to enable the client to select another licensed health care provider;

(b) provide a referral; and

(c) document the termination of care in the client's records.

(2) The procedure to terminate midwifery care to a client who has been informed that she has or may have a condition indicating the need for mandatory transfer is established herein:

(a) have the client sign a release of care indicating the LDEM has terminated providing midwifery care as of a specific date and time; or

(b) verbally instruct the client of the termination of midwifery care and document said instruction in the client record;

(c) make a reasonable effort to convey significant information regarding the client's condition to the receiving provider; and

(d) if possible, when transferring the client by ambulance or private vehicle, the LDEM accompanies the client.

R156-77-604. Submission of Outcome Data.

In accordance with Subsection 58-77-601(5), an individual licensed as an LDEM must submit outcome data electronically to the MANA's Division of Research on the form prescribed by MANA, and in accordance to the policies and procedures established by MANA. Upon request of the Division, the licensee shall submit to the Division a copy of the data submitted to MANA. A licensee must also submit outcome data to the LDEM Outcome Database at least annually.

KEY: licensing, midwife, direct-entry midwife
October 22, 2009 **58-1-106(1)(a)**
58-1-202(1)(a)
58-77-202(4)
58-77-601(2)

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.

This ruleis known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

(1) "Answer" means a responsive answer to a request.

(2) "Director" means the Director of the Division of Occupational and Professional Licensing.

(3) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(4) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.

(5) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(6) "Notice" means a notice of intent to commence action under Section 78B-3-412.

(7) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.

(8) "Party" means a petitioner or respondent.

(9) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(10) "Petitioner" means any person who files a request with the division.

(11) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(12) "Request" means a request for prelitigation panel review under Section 78B-3-416.

(13) "Respondent" means any health care provider named in a request.

R156-78B-3. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Liberal Construction.

This rule shall be liberally construed to secure the just, speedy and economical determination of all issues presented to the division.

(2) Deviation from Rule.

The division may permit a deviation from this rule insofar as it may find compliance therewith to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

A party may represent himself individually, or if not an individual, may represent itself through an officer or employee, or may be represented by counsel.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Petitioner	Request for Prelitigation Review
-vs-	
Richard Roe, Respondent	No. PR-XX-XX-XXX

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the division with service thereof to all parties named in the notice. The division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Service. Pleadings and documents issued by the division or panel shall be served either by personal service or by first class mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the division. When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service. There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail):

(Name of parties of record)
(addresses)

Dated this (day) day of (month), (year).

(Signature)
(Title)

R156-78B-8. Panel Selection and Compensation.

(1) The division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4), whenever multiple respondents are identified in a request, the division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the division whereupon the division may appoint an additional panel member to assist in evaluating damages.

(5) The division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.

Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance

with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the division, on forms available from the division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the division shall schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the division consent to a shorter period of time.

(e) The division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the division, on forms approved by the division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the division shall establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Procedure.

The division may, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Hearings Closed to the Public.

All hearings are closed to the public.

(2) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(3) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel permits petitioner to present rebuttal evidence.

(4) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(5) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their

affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(6) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(7) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(8) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(9) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(10) Subpoenas and Fees.

(a) Issuance of Subpoenas.

The division may issue subpoenas for the attendance of witnesses and the production of medical records in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Payment of Witness Fees.

A subpoenaed witness who appears for a prelitigation panel review shall be entitled to witness fees and mileage to be paid by the requesting party. Witnesses shall receive the same fee and mileage allowed by law to witnesses in a district court. A witness subpoenaed by a party may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless the fee is tendered, the witness shall not be required to appear.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall file with the division a determination whether any claim against any respondent is meritorious. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall file a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Certificate of Compliance.

Within 15 days after receiving the panel's memorandum opinion, the Director or designee shall issue a certificate of compliance which recites that petitioner has fully complied with the requirements of Section 78B-3-416. With respect to the tolling of the statute of limitations referenced in Section 78B-3-416(3), the 60 day time period mentioned therein shall begin to run as of the date the Director causes the certificate of compliance to be served, the three day mailing period set forth in Section R156-78B-4(3) to be applied.

KEY: medical malpractice, prelitigation
October 22, 2009 78B-3-416(1)(b)
Notice of Continuation April 9, 2007

R277. Education, Administration.
R277-471. Oversight of School Inspections.
R277-471-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Certified plans' examiner" means a professional who has current certification through the International Code Council which requires a rigorous testing program.

C. "Charter schools" means:

(1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and

(2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.

D. "Charter school responsible person or local charter school board building officer (charter school designee)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with the Code on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, and 58-56, Uniform Building Standards Act, as well as the provisions of this rule. The form available on the USOE School Finance and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm.

F. "Code" means the state-adopted construction code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.

G. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(11).

H. "Public School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with the Code.

I. "Superintendent" means the State Superintendent of Public Instruction.

J. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district or charter school shall follow when constructing a new public school building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction under Section 53A-20-104.5, and is available on the USOE School Finance and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm.

K. "USOE" means the Utah State Office of Education.

R277-471-2. 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 permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify local school board and charter school board responsibilities and accountability to the Board.

R277-471-3. School District Building Official, and Charter School Responsible Person.

A. Local boards of education and local charter school boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code.

(1) Local school boards shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code. Each local charter school board shall appoint a local charter school board building officer who has direct operational responsibility for construction, renovation, and inspection of the charter school. The local charter school board building officer shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

(c) Following notification, the USOE shall provide a construction project number.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of the Code.

C. The local charter school board building officer shall monitor all charter school building construction to ensure compliance with the provisions of the Code.

D. The SDBO and local charter school board building officer shall render interpretations of the Code for the school district or charter school. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.

E. The SDBO and local charter school board building officer may adopt and enforce supplemental school district and charter school policies under appropriate school district and charter school policies to clarify the application of the provisions of the Code for school district and charter school personnel.

F. Before any school district or charter school construction project begins, school districts and charter schools shall obtain a construction project number from the USOE and complete and submit construction project identification forms provided by the USOE for all projects which exceed $99,999 in cost.

G. All school district and charter school plans and specifications shall be approved by a certified plans' examiner before any school district or charter school construction project begins.

H. If a school district or charter school is unable to provide appropriate and proper school construction inspection services, the Superintendent may provide for inspection services from a list of inspectors determined by the Superintendent and charge the school district or charter school for those services. Fees shall be established in advance of inspection services.

I. For all school district or charter school projects that exceed $99,999, the SDBO and local charter school board building officers shall:

(a) submit inspection summary reports monthly to the USOE;

(b) submit inspection summary reports monthly to the appropriate local government entity building official;

(c) submit inspection certificates to the USOE and appropriate local government entity building official;

(d) maintain all submitted documentation at a designated

school district/charter school location for auditing or monitoring;

(e) identify and provide to the USOE and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector;

(f) ensure that each inspector is adequately and appropriately credentialed;

(g) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule.

(h) send the final inspection certification and inspection verification to the USOE and to the appropriate local government entity building official upon completion of the project;

J. Reports required under this rule may be paper or electronic.

R277-471-4. Coordination with Local Governments, Utility Providers and State Fire Marshal.

A. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, school districts and charter schools shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future roadways;

(4) maximize school, student and site safety.

B. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments and the State Fire Marshal.

C. School districts and charter schools shall maintain documentation for audit purposes of coordination, meetings, and agreements.

R277-471-5. Charter School Land Use Zoning within Municipalities and Counties.

A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.

B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.

C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.

D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.

R277-471-6. Public School District/Charter School Construction Inspection.

A. A public school district or charter school may employ one of three methods for school construction inspection:

(1) An independent, properly licensed and certified building inspector;

(2) a properly licensed and certified building inspector, employed by the school district; or

(3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.

B. Procedure for independent properly licensed and certified building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) The independent building inspector shall:

(a) not be an employee of the architect, contractor or any subcontractor on the project;

(b) be approved by the applicable local government or school district building inspector; and

(c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.

(4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.

(5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.

(6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:

(a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or

(b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and

(c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.

(7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.

(8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

(9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection

services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.

(10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.

(11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.

C. Procedures for properly licensed and certified school district building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.

(4) Charter schools:

(a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.

(b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.

(c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.

D. Procedure for properly licensed and certified local municipal or county building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(4) Charter schools:

(a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.

(b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

E. A municipality or county may not:

(1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code.

(2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;

(3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;

(4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;

(5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or

(6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.

F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

(1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and

(2) provide recommendations based on the walk-through.

R277-471-7. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute to each school district and charter school a Resource Manual.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board, local school boards, charter school boards, as well as school district and charter school personnel shall act consistent with the Resource Manual.

R277-471-8. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district, charter school, and interested persons involved in the school

building construction industry. The conference shall:

(1) provide current information on the design, construction, and inspection process of school buildings;

(2) provide training on school site selection, design, construction, lowest life-cycle costing, and construction inspection matters as determined by the USOE; and

(3) offer and discuss information to improve the existing public school building construction inspection program.

R277-471-9. Enforcement.

A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).

(1) If a school district or charter school fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the school district superintendent or local charter school director shall receive notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE shall interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupted the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. A nonrefundable fine in the amount of one half of one percent of the total construction costs shall be assessed school districts and charter schools that fail to report new or remodeling projects to USOE that exceed $99,999 before construction begins.

(1) Nonrefundable fine amounts shall be deducted from the respective school district's and charter school's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) School district nonrefundable fine amounts collected by USOE shall be deposited into the School Building Revolving Account; and

(b) charter school nonrefundable fine amounts collected by USOE shall be deposited into the Charter School Building Subaccount within the School Building Revolving Account.

D. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

R277-471-10. Appeals Procedure for Nonrefundable Fines.

A. School districts or local charter school boards may appeal a fine assessed under R277-471-9C consistent with the following:

(1) A fine may not be appealed until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) The appeal must be filed within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) The appeal shall be delivered or provided electronically to the USOE as provided by the appeal form.

(5) The appeal form shall require an explanation of unanticipated or compelling circumstances that resulted in local board's or charter school's failure to report new construction or remodeling projects that exceed $99,999.

(6) The appeal form shall require a notarized statement from the district superintendent or local charter board chair that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the local school board/local charter board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or school district/charter school business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

B. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

C. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further appeal opportunity.

KEY: educational facilities

July 8, 2008	**Art X Sec 3**
Notice of Continuation October 23, 2009	**53A-1-401(3)**
	53A-20-104
	53A-20-104.5
	10-9-305
	17-27-105
	53A-17a-144(4)(d)

R277. Education, Administration.
R277-494. Charter School and Online Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Definitions.

A. "Activity fees" means fees that are approved by a local board and charged to all students to participate in any or all activities sponsored by or through the public school. Fees vary among districts and schools and entitle a public school student to participate in regular school activities, to try out for extracurricular or co-curricular school activities, to receive transportation to activities, and to attend regularly scheduled public school activities.

B. "Board" means the Utah State Board of Education.

C. "Charter school" means a school acknowledged as a charter school by a local board of education under Section 53A-1a-515 and R277-470 or by the Board under Section 53A-1a-505.

D. "Co-curricular activity" means a school district or school activity, course or experience that includes a required regular school day component and an after school component; special programs or activities such as programs for gifted and talented students, summer programs and science and history fairs are co-curricular activities.

E. "Extracurricular activity" means an athletic program or activity sponsored by the public school and offered, competitively or otherwise, to public school students outside of the regular school day or program.

F. "Online school" means a school:

(1) that provides the same number of classes consistent with the requirement of similar public schools;

(2) that delivers course work via the internet;

(3) that has designated a readily accessible contact person; and

(4) that provides the range of services to public education students required by state and federal law.

G. "Pay to play fees" means the fees charged to a student to participate in a specific school-sponsored extracurricular or co-curricular activity. All fees shall be approved annually by the local board of education.

H. "Student's boundary school" means the school the student is designated to attend according to where the student's legal guardian lives or the school where the student is enrolled under Section 53A-2-206.5 et seq.

I. "Student's school of enrollment" means the public school in which the student is enrolled consistent with Section 53A-11-101 et seq.

J. "Student fee waivers" means all expenses for an activity that are waived for student participation in the activity consistent with Section 53A-12-103 et seq. and R277-407.

K. "School participation fee" means the fee paid by the charter/online school to the boundary school consistent with R277-494-4 for student participation in extracurricular or co-curricular activities.

L. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the boundary school for designated extracurricular or co-curricular activities consistent with R277-407.

R277-494-2. 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, Section 53A-1a-519(5) that directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at school district schools, and Section 53A-2-214(6) which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at school district schools.

B. The purpose of this rule is to inform school districts, charter and online schools, and parents of school participation fees and state-determined requirements for a charter school or a public online school student to participate in extracurricular athletics and activities at a student's boundary school.

R277-494-3. Requirements for Payment and Participation Integral to the Schedule.

A. A charter or online school shall allow student participation in activities designated under R277-494-1E upon satisfaction of requirements and payments of this rule and satisfaction of school district standards and requirements.

B. A school participation fee of $75.00 per student shall be paid by the student's school of enrollment to the boundary school at which the student desires to participate. Upon annual payment of the school participation fee, the student may participate in all extracurricular school activities as defined in R277-494-1E during the school year for which the student is qualified and eligible.

C. The participation fee paid by the charter or online school is in addition to individual student participation fees for specific extracurricular activities and the activity fees charged to all students in the secondary school to supplement school activities as assessed by the school consistent with this rule. Student participation fees or required activity fees shall be paid to the boundary school by the participating student.

D. All fees, including school participation fees, student participation fees and activity fees shall be paid prior to student participation.

E. If a participating charter or online school student qualifies for fee waivers, all waived student participation fees shall be paid to the boundary school by the student's school of enrollment prior to student participation.

R277-494-4. Additional Provisions.

A. Charter, online and traditional schools may negotiate to allow student participation in co-curricular activities such as debate, drama, choral programs, specialized courses or programs offered during the regular school day, and school district-sponsored enrichment programs or activities. Participating charter/online students shall be required to meet all attendance and course requirements of all boundary public school students.

B. A charter and online student participating under this rule shall meet all eligibility requirements and timelines of the boundary school.

KEY: extracurricular, co-curricular, activities, student participation
October 22, 2009 **Art X Sec 3**
53A-1-401(3)
53A-1a-519(5)
53A-2-214(6)

R277. Education, Administration.
R277-501. Educator Licensing Renewal and Timelines.
R277-501-1. Definitions.

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1N.

C. "Accredited school" for purposes of this rule means a public or private school that has met standards considered to be essential for the operation of a quality school program and has had formal approval by the Northwest Association of Schools and Colleges.

D. "Active educator" for purposes of this rule means an individual holding a valid license issued by the Board who is employed by a Utah public or accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle in a Utah public or accredited private school.

E. "Active educator license" means a license that is currently valid for service in a position requiring a license.

F. "Approved Inservice" means training or courses, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

G. "Board" means the Utah State Board of Education.

H. "College/university course" means a course taken through an institution approved under Section 53A-6-108. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals.

I. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better.

J. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

K. "Educational research" means conducting educational research or investigating education innovations.

L. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a Utah public or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

M. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

N. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

P. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system.

Q. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah school.

R. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "No Child Left Behind (NCLB) standards for highly qualified teachers" means that all teachers of Core academic subjects as defined under R277-510-1B, demonstrate adequate content knowledge of their teaching assignments as of July 1, 2006.

U. "Professional colleague" for purposes of this rule means a Utah Level 2 or 3 licensed educator who has adequate familiarity with the inactive educator's license area of concentration and endorsement(s).

V. "Professional development plan" means a document prepared by the educator consistent with this rule.

W. "Professional development points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

X. "USOE" means the Utah State Office of Education.

Y. "Verification of employment" means official documentation of employment as an educator.

R277-501-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

R277-501-3. Categories of Acceptable Activities for a Licensed Educator.

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Professional development:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation; license points may be limited to specific educational activities under R277-501-3C.

D. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) 25 license points shall be awarded for each Board-approved test score report submitted.

(3) No more than two test score reports may be submitted in a license cycle for a maximum of 50 points.

(4) Each score report submitted shall have a different test number and title.

(5) The license renewal applicant is responsible for reporting of score test results. This information should be used by renewal applicants to design ongoing professional development.

E. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

F. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

G. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development points on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

H. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educators's principal/supervisor or in the case of the inactive educator, a professional colleague, or a USOE or Utah school district specialist.

(3) One license point is awarded for each clock hour of participation.

I. Substituting in a Utah public or accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501-1D and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle as a substitute.

J. A license-holder who instructs students in a professional or volunteer capacity in a Utah public or accredited private school may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle. Paraprofessionals/volunteers may accrue one professional development point for every three hours of paraprofessional/volunteer service, as determined and verified by the building principal or supervisor.

K. Up to 50 license points may be earned in any one or any combination of categories E, F and G above.

R277-501-4. Required Renewal License Points for Designated License Holders.

A. Level 1, 2 and 3 license holders may accrue relicensure points beginning with the date of each new license renewal.

B. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

C. Level 1 license holder with one year licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

D. Level 1 license holder with two years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

E. Level 1 license holder with three years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 25 professional development points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

F. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.

G. Level 2 license holder:

(1) An active educator shall earn at least 95 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year in a Utah

public or accredited private school within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years in a Utah public or accredited private school within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

H. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree from a regionally accredited college or university in education or in a field related to a content area in a unit of the public education system and shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

I. Teachers seeking license renewal who do not meet NCLB standards for highly qualified teachers under R277-510 shall focus 95 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major, major equivalent, or other NCLB highly qualified criteria.

R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. A Level 2 active educator whose license expires June 30 shall earn 95 license points during the educator's five year renewal period and shall provide verification of employment.

B. A Level 2 inactive educator whose license expires June 30 shall earn 200 license points during the educator's five year renewal period.

R277-501-6. Background Checks Required for Renewal.

A. A background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401. No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

B. Beginning no later than July 1, 2009, applicants for Utah educator license renewal shall submit fingerprints to the Utah Department of Public Safety consistent with procedures and scheduling developed and disseminated by the USOE in consultation with the Utah Department of Public Safety.

C. No later than July 1, 2009, the USOE shall provide to the Utah Department of Public Safety a list of licensed Utah educators including dates of birth, social security numbers, and other necessary demographic information to be determined between the USOE and the Utah Department of Public Safety.

R277-501-7. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with federal and state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor or a professional colleague designated by the building administrator.

B. If an educator is not employed in a Utah public or accredited private school at the renewal date, the educator shall review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form. The verification form signed by the professional colleague shall be provided to the USOE between January 1 and June 30 of the renewal year.

C. Each Utah license holder shall be responsible for maintaining a professional development plan.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development documentation shall be retained by the educator for a minimum of two renewal cycles.

D. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the educator's assigned renewal year.

(1) Forms submitted by mail that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

E. License holders may begin to acquire professional development points under this rule on the date identified on the license as the date of licensure.

F. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

G. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

H. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-502.

I. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

J. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999 or at their official employment date, whichever is later.

(2) All specialists shall be considered Level 1, 2 or 3 license holders consistent with R277-521-3, 4 and 5.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

K. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan;

and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

L. Completion of relicensure requirements by an educator under R277-501-4 or R277-501-6K, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

M. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

KEY: educational program evaluations, educator license renewal

October 22, 2009	**Art X Sec 3**
Notice of Continuation February 23, 2005	**53A-6-104**
	53A-1-401(3)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Accredited school" for purposes of this rule, means public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

D. "Board" means the Utah State Board of Education.

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

H. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

I. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

K. "License areas of concentration" means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative, Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

L. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

M. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

N. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

O. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process of criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(1) LEAs and educator preparation institutions shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(2) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(3) The Level 1 license is issued for three years.

(4) An educator shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

(6) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and

educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association (ASHA), or who holds a doctorate in the educator's field of practice.

(1) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

(3) A Level 3 license may be renewed if the holder maintains National Board Professional Teaching Standards Certification status or maintains a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, but not issued after 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative;
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Letters of Authorization

(a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for areas of concentration or endorsements.

(b) An approved Letter of Authorization is valid for one year and may be renewed for a total of three years.

(c) Educators working under letters of authorization shall not be considered highly qualified.

(d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing shall be considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district/charter school with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE Educator Quality and Licensing website.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory school district/charter school evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3.

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual may contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his personal file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing

October 22, 2009	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-6-104**
	53A-1-401(3)

R277. Education, Administration.
R277-607. Truancy Prevention.
R277-607-1. Definitions.

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Habitual truant" means a school-age minor who:

(1) is at least 12 years old;

(2) is subject to the requirements of Section 53A-11-101.5; and

(3)(a) is truant at least ten times during one school year; and

(b) fails to cooperate with efforts on the part of school authorities to resolve the minor's attendance problem as required under Section 53A-11-103.

C. "Habitual truant citation" is a citation issued only consistent with Section 53A-11-101.7.

D. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

E. "Truant" means absent without a valid excuse.

F. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the school or district policy.

G. "USOE" means the Utah State Office of Education.

H. "Valid excuse" means an excuse for an absence from school consistent with Section 53A-11-101(9) and may include:

(1) illness;

(2) family death;

(3) approved school activity;

(4) excuse consistent with student's IEP, Section 504 accommodation plan, or a school/school district valid excuse definition.

R277-607-2. 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 Sections 53A-11-101 through 53A-11-106 which direct educational entities and parents working on behalf of children to encourage compliance with the compulsory education law, school attendance for all students, and cooperation in these important efforts.

B. The purpose of this rule is to direct schools/school districts and charter schools to establish procedures for:

(1) informing parents about compulsory education laws;

(2) encouraging and monitoring school attendance consistent with the law; and

(3) providing firm consequences for noncompliance.

C. This rule encourages meaningful incentives for parental responsibility and directs school districts and charter schools to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Each local school board and charter school board shall develop a truancy policy that encourages regular, punctual attendance of students, consistent with this rule and 53A-11-101 through 53A-11-105 and shall review the policy annually.

B. Local school boards and charter school boards shall annually review attendance data and consider revisions to policies to encourage student attendance.

C. The local school board and charter school board truancy policy shall be available for review by parents or interested parties.

D. Habitual truant citations may be issued to students consistent with Section 53A-11-101.7.

R277-607-4. School/School District and Charter School Responsibilities.

A. School districts and charter schools shall:

(1) establish definitions not provided in law or this rule necessary to implement a compulsory attendance policy;

(2) include definitions of approved school activity under Section 53A-11-101(9)(c) and excused absence to be provided locally under Section 53A-11-101(9)(e);

(3) include criteria and procedures for preapproval of extended absences consistent with Section 53A-11-101.3; and

(4) establish programs and meaningful incentives which promote regular, punctual student attendance.

B. School districts and charter schools shall include in their policies provisions for:

(1) notice to parents of the policy;

(2) notice to parents as discipline or consequences progress; and

(3) opportunity to appeal disciplinary measures.

C. School districts and charter schools shall establish and publish procedures by which school-age minors or their parents may contest notices of truancy.

R277-607-5. Parent Responsibilities.

Parents of school-age minors shall cooperate with school boards and charter school boards to secure regular attendance at school by school-age minors for whom they are responsible.

KEY: compulsory education, truancy
October 10, 2007 Art X Sec 3
Notice of Continuation October 23, 2009 53A-1-401(3)
53A-11-101 through 53A-11-105

R280. Education, Rehabilitation.
R280-203. Certification Requirements for Interpreters for the Hearing Impaired.
R280-203-1. Definitions.

A. "Advisory board" means the Interpreters Certification Board created to assist the Board created by and with the responsibilities of 53A-26a-201 and 202.

B. "Certification of deaf interpreters" means the written approval of the Board required of individuals seeking payment for facilitating effective communication between hearing and hearing impaired persons.

C. "Signed English, cued speech, American Sign Language (ASL), and oral interpreting" are types of alternative communications for the purposes of this Rule.

D. "Board" means the Utah State Board of Education.

E. "USOR" means the Utah State Office of Rehabilitation.

R280-203-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to satisfy the directives of 53A-26a-202(2) including:

(1) certification qualifications provided in the UTAH STATE BOARD OF EDUCATION INTERPRETERS AND TRANSLITERATORS FOR THE DEAF CERTIFICATION POLICY AND PROCEDURE MANUAL ("INTERPRETERS/TRANSLITERATORS MANUAL"), December 2002;

(2) procedures governing applications for certification;

(3) provisions for a fair and impartial method of examination of applicants;

(4) procedures for determining unprofessional conduct; and

(5) conditions and procedures for reinstatement and renewal of certification.

R280-203-3. Certification Qualifications.

A. Candidates for certification shall be at least 18 years old.

B. Candidates shall pass written and performance evaluations provided by the Division of Services to the Deaf.

C. Candidates shall meet the criteria of 53A-26a-302.

R280-203-4. Examination of Applicants for Certification.

Individuals applying for interpreter certification shall be tested and rated by the Division of Services for the Deaf and Hard of Hearing Interpreters Certification Panel according to procedures established in the INTERPRETERS/TRANSLITERATORS MANUAL.

R280-203-5. Unprofessional Conduct.

A. The definition of "unprofessional conduct" provided in 53A-26a-502 shall be supplemented with the definition applied to educators in R277-514-3 and provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. A complaint alleging unprofessional conduct by a certified interpreter may be filed under the procedure of R277-514. The procedure is provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

C. The complaint shall be reviewed by the Commission as provided for in R277-514-4.

D. A member of the advisory board shall assist the Board in reviewing the recommendation of the Commission, as provided in 53A-26a-202(3).

R280-203-6. Renewal and Reinstatement.

A. An individual holding an interpreter's certificate is eligible to have that certificate renewed as provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. An individual whose interpreter's certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board. The Board may require the applicant for reinstatement to complete the procedure for certification or may, upon consultation with the advisory board, designate the areas of the application process in which the applicant shall be reviewed.

KEY: certification, interpreters

2003	**53A-24-103**
Notice of Continuation October 23, 2009	**53A-1-401(3)**
	53A-26a-201
	53A-26a-202

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-101. Title.

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

R359-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

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

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

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

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

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

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

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

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

(c) violating the rules for conduct of contests;

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

(e) testing positive for HIV;

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

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

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

R359-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R359-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1). The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

R359-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, timekeeper, manager, contestant, second, referee, or judge.

(2) A licensed amateur MMA contestant shall not compete against a professional unarmed combat contestant, or receive a purse and/or other remuneration (other than for reimbursement for reasonable travel expenses, consistent with IRS guidelines).

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

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

R359-1-302. Licensing - Procedure.

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

R359-1-401. Designation of Adjudicative Proceedings.

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

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

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

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

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

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

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

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

(c) protests against the results of a match.

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

R359-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.

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

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

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

R359-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

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

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

R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

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

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

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

R359-1-405. Reconsideration and Judicial Review.

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

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

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

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

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

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

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

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

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

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

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of $10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter should also have life insurance coverage of $10,000 for each contestant in case of death.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) $100 for a contest or event occurring in a venue of fewer than 200 attendees;

(ii) $200 for a contest or event occurring in a venue of at least 200 attendees but fewer than 500 attendees;

(iii) $300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iv) $400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(v) $600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(vi) $1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(viii) $2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first $500,000, and one percent of the next $1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than $25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or

exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

R359-1-502. Ringside Equipment.

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

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

(b) stools for use by the seconds;

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

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

(e) a portable resuscitator with oxygen;

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

(g) seats at ringside for the assigned officials;

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

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

(j) a gong;

(k) a public address system;

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

(m) a separate room for physical examinations;

(n) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(o) adequate security personnel; and

(p) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms and for physical examinations and weigh-ins.

R359-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R359-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

(i) the Commission members, Director and representatives;

(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and

(iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the

program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R359-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;
(b) teeth;
(c) jaw;
(d) neck;
(e) chest;
(f) ears;
(g) nose;
(h) throat;
(i) skin;
(j) scalp;
(k) head;
(l) abdomen;
(m) cardiopulmonary status;
(n) neurological, musculature, and skeletal systems;
(o) pelvis; and
(p) the presence of controlled substances in the body.

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

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

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

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

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

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

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

R359-1-506. Drug Tests.

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:

(a) Alcohol;

(b) Stimulant; or

(c) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the 2008 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1)or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a contestant or assigned official shall submit to a test of body fluids to determine the presence of drugs. A contestant must give an adequate sample or it will deem to be a denial. The promoter

shall be responsible for any costs of testing.

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

(a) immediately suspend the contestant's or assigned official's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

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

(8) Unless the commission licensing an event requires otherwise, a contestant who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

R359-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

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

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

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

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

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

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within 180 days prior to the contest.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. Contestant Use or Administration of Any Substance.

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

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

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

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

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

R359-1-510. Weighing-In.

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

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

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

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R359-1-511. Announcer.

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

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

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

R359-1-512. Timekeepers.

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

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

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

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

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

R359-1-513. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

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

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

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

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

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R359-1-601. Boxing - Contest Weights and Classes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the weight differential;

(c) the caliber of opponents;

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

(e) previous suspensions or disciplinary actions.

R359-1-602. Boxing - Number of Rounds in a Bout.

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

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

R359-1-603. Boxing - Ring Dimensions and Construction.

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

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

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

R359-1-604. Boxing - Gloves.

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

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

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

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

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

R359-1-605. Boxing - Bandage Specification.

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

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

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

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

R359-1-606. Boxing - Mouthpieces.

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

R359-1-607. Boxing - Contest Officials.

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

(a) one referee;

(b) three judges;

(c) one timekeeper; and

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

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

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

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

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

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

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

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

R359-1-608. Boxing - Contact During Contests.

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

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

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

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

R359-1-609. Boxing - Referees.

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

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

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

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

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

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

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

R359-1-610. Boxing - Stalling or Faking.

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

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

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

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

R359-1-611. Boxing - Injuries and Cuts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R359-1-612. Boxing - Knockouts.

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

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

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

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

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

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

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

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

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

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

R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

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

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

(3) A report that records the amount of punishment a

fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

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

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

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

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

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

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

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

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

R359-1-614. Boxing - Waiting Periods.

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

TABLE

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

R359-1-615. Boxing - Fouls.

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

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

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

(c) hitting or gouging with an open glove;

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

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

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

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

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

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

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

(k) hitting below the belt line;

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

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

(n) using abusive language in the ring;

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

(p) intentionally spitting out a mouthpiece;

(q) any backhand blow; or

(r) biting.

R359-1-616. Boxing - Penalties for Fouling.

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

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

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

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

R359-1-617. Boxing - Contestant Outside the Ring Ropes.

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

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

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

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

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

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

R359-1-618. Boxing - Scoring.

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

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

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

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

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

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

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

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

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

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

R359-1-619. Boxing - Seconds.

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

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

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

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

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

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

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R359-1-609(6) and R359-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

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

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

R359-1-620. Boxing - Managers.

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

R359-1-621. Boxing. Identification - Photo Identification Cards.

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

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

(a) the contestant's name and address;

(b) the contestant's social security number;

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

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

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

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

R359-1-622. Boxing - Dress for Contestants.

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

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

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

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

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

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

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

R359-1-623. Boxing - Failure to Compete.

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

approved by the Commission to examine the contestant.

R359-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

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

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

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

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

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

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

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

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R359-1-507 of this Rule and Subsection 63C-11-317(1).

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

R359-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R359-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

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

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-802. Martial Arts Contest Weights and Classes.

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

(i) super heavyweight is over 265 lbs. (120.45 kgs.).

R359-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

R359-1-1001. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R359-1-1002. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

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

(3) "Grant" means the Commission's distribution of monies as authorized under Section 63C-11-311(3).

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

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

R359-1-1003. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

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

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

(c) Upon request from the Commission, document the

following:

(i) the financial need for the grant;

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

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

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

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

(b) Maintenance costs; and

(c) Equipment costs.

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

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

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

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

R359-1-1004. Criteria for Awarding Grants.

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

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

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

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

(4) demonstrated need for the funding; or

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

KEY: licensing, boxing, unarmed combat, white-collar contests
October 28, 2009 63C-11-101 et seq.
Notice of Continuation May 10, 2007

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The Department may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is the close of business on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 calendar days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and

federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance that provides coverage in Utah in the 90 days prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(g) Children of a former spouse when a divorce has been finalized.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count as income any payments from sources that federal law specifically prohibit from being counted as income to determine eligibility for federally-funded programs.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(22) If the household expects to receive less than $500 per year in taxable interest and dividend income, then they are 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, 123 Stat. 115, 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.

R382-10-14. Budgeting.

The following section describes methods that the

Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a 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 are 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 in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment in person, through the mail, by fax, or online.

(4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 30 days of the date of application. If a decision can not be made in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by the close of normal business hours on a weekday and not on a Saturday, Sunday, or a state or federal holiday. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the normal close of business hours on a weekday or on a Saturday, Sunday, or a state or federal holiday, the effective date of CHIP enrollment is the next weekday.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the effective date of enrollment is the last business day that a staff person from the state medical eligibility agency was available to receive or pick up applications from the location.

(3) An applicant must provide the verifications needed to process an application and determine eligibility no later than the close of business on the last day of the application period. If the

last day of the application processing period falls on a day of the week when the medical eligibility office is closed, then the applicant has until the close of business on the next day that the medical eligibility agency is open. An applicant may request more time to provide verifications. The request must be made by the last day of the application processing period.

(4) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

(5) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(6) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(7) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(8) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-20. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $75.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP and assessed a $15 late fee. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium and the late fee by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums and late fees before the children can be re-enrolled.

R382-10-21. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

(e) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-22. Case Closure or Withdrawal.

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits
October 22, 2009 26-1-5
Notice of Continuation May 19, 2008 26-40

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-101. Food Safety Manager Certification.
R392-101-1. Authority and Purpose of Rule.

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

R392-101-2. Definitions.

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

(i) Beverages such as coffee, tea, and fruit juices;

(ii) Pasteurized Grade A milk;

(iii) Fresh fruits;

(iv) Frozen and commercially processed and prepackaged fruits;

(v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;

(vi) Cereals;

(vii) Commercially prepackaged jams, jellies, honey, and syrup;

(viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;

(ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and

(x) foods served with single-use articles.

(xi) Single-use article means a utensil designed and constructed to be used once and discarded.

(xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

R392-101-3. Certification and Recertification Examination Content.

Certification and recertification examinations shall require the examinee to demonstrate knowledge in food protection management in the following areas:

(1) Identify foodborne illness.

(a) Define terms associated with foodborne illness.

(i) foodborne illness

(ii) foodborne outbreak

(iii) foodborne infection

(iv) foodborne intoxication

(v) diseases communicated by food

(vi) foodborne pathogens

(b) Recognize the major organisms and toxins that can contaminate food and the problems that can be associated with the contamination.

(i) bacteria

(ii) viruses

(iii) parasites

(iv) fungi

(c) Define and recognize potentially hazardous foods.

(d) Define and recognize chemical and physical contamination and illnesses that can be associated with chemical and physical contamination.

(e) Define and recognize the major contributing factors for foodborne illness.

(f) Recognize how microorganisms cause foodborne disease.

(2) Identify time/temperature relationship with foodborne illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

(i) receiving

(ii) storing

(iii) thawing

(iv) cooking

(v) holding/displaying

(vi) serving

(vii) cooling

(ix) storing or post production

(x) reheating

(xi) transporting

(b) Describe the use of thermometers in monitoring food temperatures.

(i) types of thermometers

(ii) techniques and frequency

(iii) calibration and frequency

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

(i) hand washing technique and frequency

(ii) proper use of gloves, including replacement frequency

(iii) minimal hand contact with food

(b) Recognize the association of personal habits and behaviors and foodborne illness.

(i) smoking

(ii) eating and drinking

(iii) wearing clothing that may contaminate food

(iv) personal behaviors, including sneezing, coughing and scratching.

(c) Recognize the association of health of a foodhandler to foodborne disease

(i) free of symptoms of communicable disease

(ii) free of infections spread through food on contact

(iii) food protected from contact with open wounds

(d) Recognize how policies, procedures and management contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination from purchasing to serving.

(a) Define terms associated with contamination:

(i) contamination

(ii) adulteration

(iii) damage

(iv) approved source

(v) sound and safe condition

(b) Identify potential hazards prior to delivery and during delivery.

(i) approved source

(ii) sound and safe condition

(c) Identify potential hazards and methods to minimize or eliminate hazards after delivery:

(i) personal hygiene

(ii) cross contamination from food to food

(iii) cross contamination between equipment and utensils

(iv) contamination from chemicals

(v) contamination from additives

(vi) physical contamination

(vii) contamination during service and display

(viii) contamination from customers

(ix) storage

(x) re-service

(5) Identify correct procedures for cleaning and sanitizing equipment and utensils:

(a) Define terms associated with cleaning and sanitizing.

(i) cleaning

(ii) sanitizing

(b) Apply principles of cleaning and sanitizing
(c) Identify materials: equipment, detergent and sanitizer
(d) Identify appropriate methods of cleaning and sanitizing.
(i) manual dishwashing
(ii) mechanical dishwashing
(iii) clean-in-place
(e) Identify frequency of cleaning and sanitizing
(6) Recognize problems and potential solutions associated with facility, equipment and layout.
(a) Identify facility, design and construction suitable for food establishments:
(i) refrigeration
(ii) heating and hot-holding
(iii) floors, walls and ceilings
(iv) pest control
(v) lighting
(vi) plumbing
(vii) ventilation
(viii) water supply
(ix) wastewater disposal
(x) waste disposal
(b) Identify equipment and utensil design and location
(7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance:
(a) by self inspection program.
(b) by pest control program.
(c) by cleaning schedules and procedures.
(d) by equipment and facility maintenance program.

R392-101-4. Food Safety Manager Certification Courses.
(1) For the purposes of Section 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in R392-101-5(4) as determined by that examination's developer.
(2) The course developer shall certify the instructor.
(3) The Department shall approve the course for 3 years.

R392-101-5. Test Approval.
(1) A person seeking approval of an examination shall provide the following background information to the Department:
(a) The person's name, address, telephone number and contact person.
(b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.
(c) A copy of the examination's pool of questions. Each question shall be:
(i) Cross-referenced to the corresponding content area in R392-101-3, and
(ii) Documented with the correct answer and the source from which the correct answer was determined.
(d) A sample copy of the official certificate issued to persons who pass the examination.
(2) An examination must meet the following requirements in order to be approved:
(a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.
(b) All questions shall be multiple choice with 4 choices.
(c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:
(i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions,
(ii) Identify time/temperature relationship with foodborne illness shall constitute 6-20% percent of the total examination questions,
(iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions,
(iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions,
(v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions,
(vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions,
(vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.
(d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.
(e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.
(f) The examination questions must be grammatically correct and contain no misspellings.
(g) The distractors must be relevant to the examination question and represent a plausible alternative.
(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.
(4) The Department shall maintain a current list of approved examinations.
(5) A person may not represent an examination as Department of Health approved, or other similar language, if the examination is not listed according to R392-101-5(4).

R392-101-6. Test Administration.
(1) Test administrators shall:
(a) Provide monitors and security at the locations where the examination is administered.
(b) Maintain a tracking system for all examinations to protect them against theft.
(c) Provide locations and dates of all examinations administered by the testing organization upon request of the Department.
(d) Provide necessary staff to administer, monitor and grade examinations.
(e) Maintain records of each candidate's name, home address, social security number, pass/fail status, date of examination, and name of instructor for at least three years.
(f) Provide accommodation for examinees who do not speak English and who wish to take the test.
(2) The test administrator shall assure there is at least one monitor for every 40 students taking the examination.
(3) The monitor shall confirm the identity of the individual who wishes to take the examination by photographic identification, driver's license or student identification card. The individual shall provide a legal document bearing his signature to the monitor if he does not have a photographic identification card.
(4) The test administrator shall provide test security measures which protect the test from compromise in preparation, printing and transportation to the site, as follows:

(a) The examination materials are stored and administered under secure conditions, where access to the examination is limited to the monitor and test administrator.

(b) The examination materials are inventoried prior to and immediately following each administration of the examination.

(c) The examination materials are available to the candidate during the examination administration only.

(5) The test administrator may not certify an individual determined to have cheated on the examination.

(6) The test administrator may not administer an examination which has been compromised.

R392-101-7. Certification and Recertification Requirements.

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department-approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager. A photocopy of the documentation is acceptable. If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department-approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation to the appropriate local health department indicating a passing score on a Department-approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

R392-101-8. Exempt Establishments.

A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook foods that are required to reach critical temperatures as required by R392-100;

(b) use foods that are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use foods that must be reheated to 165 degrees as required by R392-100.

R392-101-9. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: public health, food service
July 25, 2006 26-15a-103
Notice of Continuation February 12, 2009

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-302. Design, Construction and Operation of Public Pools.
R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools. This rule does not regulate any pool used only by an individual, family, or members or guests of multiple housing units of three or fewer units.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "Bather Area" means any area normally occupied by bathers as they participate in bathing activities. Bather areas include pools, decks, slides, and dressing rooms.

(2) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(3) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(4) "Department" means the Utah Department of Health.

(5) "Diver area" means the area of a pool that is designed, operated, and reserved around each diving board or platform.

(6) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(7) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(8) "Float Tank or Relaxation Tank" means a tank containing skin-temperature salt water that is designed to provide for solitary body floatation upon or within the water.

(9) "High Bather Load" means 90% or greater of the designed maximum bather load."

(10) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(11) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(12) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(13) "Lifeguard" means an attendant who supervises the safety of bathers.

(14) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(15) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(16) "Non-swimmer area" means each area of a pool with water 5 feet, 1.52 meters, or less in depth.

(17) "Pool" means a man-made basin, chamber, receptacle, tank, or tub which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(18) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(19) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(20) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool."

(21) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(22) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(23) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(24) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(25) "Swimmer area" means each area of a pool with water over 5 feet, 1.52 meters, in depth, which is not designed, operated, or reserved as a diver area.

(26) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(27) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(28) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(29) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(30) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(31) "Water play activity" means play associated with or facilitated by playground type equipment or recreational features and incorporates water as part of its designed function. Water play does not include swimming, diving, waterslides as described in R392-302-31,or organized sports, or instruction of these activities.

(32) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap.

R392-302-5. Sewer System.

(1) Each public pool must discharge waste water to a public sanitary sewer system if the sewer system is within 300 feet of the property line. Where no public sanitary sewer system is available within 300 feet of the property line, the local health department may approve connections made to a disposal system designed, constructed, and operated in accordance with the minimum requirements of the Department of Environmental Quality.

(2) Each public pool must connect to a sewer or wastewater disposal system through an air break to preclude the possibility of sewage or waste backup into the piping system.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) Construction of a public pool must withstand the stresses associated with the normal uses for which the public pool was designed.

(3) Each pool shell must be bonded to the supporting members.

(4) Each pool shell must be designed and constructed in a manner that provides a smooth, easily cleanable surface.

(5) Except for spa pools, the pool shell surface must be of a white or light pastel color.

(6) Sand, clay, or earth bottoms are prohibited.

(7) Vinyl or other flexible liners are prohibited.

(8) The pool shell surface coatings and textures, including flexible coating materials of at least 60 mils in thickness, may be used if they are bonded to a pool shell that is constructed as provided in Subsections R392-302-6(1), (2) and (3).

(a) The coatings must provide a smooth surface that is easily cleanable.

(b) The coatings must be slip resistant.

(9) The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints.

(10) A pool shell constructed of materials other than concrete must:

(a) be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) and the spa or other pool basin or tub shall bear the IAPMO logo; or

(b) meet construction and material standards that are equivalent to IAPMO's.

R392-302-7. Bather Load.

(1) The bather load capacity for each area of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a non-swimmer area during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in a swimmer area during maximum load.

(c) Three hundred square feet, 27.87 square meters, of pool water surface area must be reserved for each diving area. This area may not be included in computing swimmer and non-swimmer areas.

(d) A design limit of nine persons is allowed for each diving area.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans. The pool design shall separate wading pools from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

(2) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(3) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) Have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters.

(b) Have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less.

(c) Be tangent to the wall.

(d) Have a radius at least equal to or greater than the depth

of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters.

(e) Have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited.

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches in height in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(2) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(3) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(4) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(5) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(6) The steps, recessed steps, and ladders, must have one or more handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(d) Submerged steps or rungs which are not recessed must be guarded by handrails. The hand rail must be mounted on the deck and extend to the bottom step.

(7) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(a) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(b) Steps must have a line at least 1 inch, 2.54 centimeters, in width, and be of a contrasting dark color for maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(d) In a spa pool where the bottom step serves as a bench or seat, the bottom riser must be a maximum of 14 inches, 35.56 centimeters.

(8) Pool ladders must meet the following requirements:

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) All ladders must be designed to provide a handhold and must be rigidly installed.

(c) There must be a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(9) Full or partial recessed steps must meet the following requirements:

(a) Where full or partial recessed steps are used, a set of handrails must be located at the top of the course with a rail on each side. The handrails must extend over the coping or edge of the deck.

(b) Full or partial recessed steps must be designed to be readily cleanable and to provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

(10) The designing architect or engineer or the facility owner must anticipate maximum loads on supports, platforms and steps for diving boards, and ensure that supports, platforms, and steps are of substantial construction and of sufficient structural strength to safely carry the maximum anticipated loads.

(a) Handrails must be provided at all steps and ladders leading to diving boards more than 3'3" feet, 1 meter, above the water.

(11) Platforms and diving boards which are over 3'3" feet, 1 meter, high, must be designed to protect divers from falls to the deck or pool curb by the installation of guard railings.

(12) A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide as measured from the pool side edge of the coping must extend completely around the pool.

(2) At least 5 feet, 1.52 meters, of deck area must be provided behind the deck end of any diving board, platform,

slide, step, or ladder.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(4) Decks and walkways must be maintained free of standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(a) The department may grant exceptions for deck construction materials for spa pools or other applications where sealed, clear-heart redwood is used.

(6) Deck drains may not return water to the pool or the circulation system.

(7) Decks must be maintained in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping and must be wet vacuumed as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 3-3/4 inches, 9.53 centimeters, and a maximum height of 7-3/4 inches, 19.7 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

(10) The deck of a wading pool may be included as part of adjacent pool decks.

(11) A spa deck must meet each of the following requirements:

(a) A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa. This width may include the coping.

(b) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. The department may grant an exception to deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The common pool side wall may not exceed 12 inches, 30.48 centimeters, in width.

R392-302-14. Fencing.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be at least 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use.

(3) Bathing areas must be separated from non-bathing areas by barriers with a minimum height of 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high.

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The normal water line of the pool must be maintained within 9 inches, 22.86 centimeters, of the deck whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if it can be demonstrated that the safety of the bathers is not compromised.

(a) Except for spas, wading pools, wave pools, slide pools, vehicle slide pools, and floatation tanks, the circulation system shall clarify and disinfect the entire volume of pool water in eight hours or less, thus providing a minimum turnover of at least three times in 24 hours.

(b) The turnover rate must be increased to provide a six hour turnover for pools subjected to high bather loads if a review of bacteriological water quality reports by the department or local health department having jurisdiction demonstrates that high bather loads may have contributed to unsatisfactory water samples.

(c) The circulation equipment must be operated continuously except for periods of routine or other necessary maintenance and must be designed to permit complete drainage of the system. Table 1 further describes these requirements.

(d) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(e) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed

10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum diatomite filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure diatomite filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R576-201, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with National Sanitation Foundation NSF/ANSI 50-2004, which is incorporated and adopted by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

(12) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(13) A spa pool must have a minimum of one turnover every 30 minutes. The circulation lines of jet systems and other forms of water agitation used in spa and therapy pool must be independent and separate from the circulation-filtration and heating systems.

(14) Float tank circulation systems, consisting of pumps, piping, filters, and disinfection equipment must be provided which will clarify and disinfect the tank's volume of water in 15 minutes or less. The total volume of water within a float tank must be turned over at least twice between uses by patrons.

(15) Wave pool circulation-filtration systems must be operated at a minimum of one turnover every six hours.

(16) Slide and vehicle slide pools must be operated at a minimum of one turnover every hour.

TABLE 1

Circulation

Type of Pool	Minimum Number of Wall Inlets	Minimum Number of Skimmers per 3,500 square feet or less	Minimum Turnover Time
1. Swim	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters.	8 hours
2. Swim, high bather load	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
3. Wading pool	1 per 20 feet, 6.10 meters, minimum of 2 equally spaced	1 per 500 sq. ft. 46.45 sq. meters	1 hour
4. Spa	One per 20 feet, 6.10 meters	1 per 100 sq. ft., 9.29 sq. meters	30 minutes
5. Wave	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
6. Slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
7. Vehicle slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
8. Float tank	1	1	15 minutes with 2 turnovers between patrons
9. Special Purpose Pool	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour

(17) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-17(4) and (5), wall inlets must be placed every 10 feet, 3.05 meters, around the pool

perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(a) Each wading pool shall have a minimum of two equally spaced wall inlets located to avoid the creation of a vortex in the pool.

(5) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(6) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) Each pool shall have a minimum of two outlets. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ASME A112.19.8a-2008.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets must connect to pipes of equal diameter.

(d) The outlet system must not allow any outlet to be cut out of the suction line by a valve or other means.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) No feature or circulation pump shall be connected to less than two outlets unless connected to an anti-entrapment outlet system that the operator demonstrates to the Department as being effective in preventing entrapment.

(i) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(j) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(k) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

(a) whether the drain is for single or multiple drain use;

(b) the maximum flow through the drain cover; and

(c) whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

(a) the sump that is recommended by the drain cover or grate manufacturer;

(b) a sump specifically designed for that drain by a Registered Design Professional as defined in ASME A112.19.8a-2008; or

(c) a sump that meets the ASME A112.19.8a-2008 standard.

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(h) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

(a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2002 or ASTM standard F2387;

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. An easily readable sign shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(b) Install an outlet system that includes no fewer than two

suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(h) and 18(2) through (3)(c).;

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system where, rather than drawing directly from the drain, the pump draws from a surge or collector tank wherein the contained water surface is maintained at atmospheric pressure;

(d) Install a drain of a size and shape that a human body cannot sufficiently block to create a suction entrapment hazard that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii)(I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with National Sanitation Foundation NSF/ANSI 50-2007 standards or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that meets the requirements of ASME A112.19.8A-2008; and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ASME A112.19.8A-2008 and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, diatomaceous earth filter, or a cartridge filter.

(4) The following requirements are applicable to gravity and pressure rapid sand filters, all of which must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004 or is determined to be equivalent by the department.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design

rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent by the department.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Diatomaceous earth filters, whether of the vacuum or pressure type, must comply in all respects with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent standards by the department. The filtering area must be compatible with the design pump capacity as required by Section R392-302-16, Table 1.

(a) The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat device is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a visible precautionary statement warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth must be provided.

(7) The department may waive National Sanitation Foundation, NSF/ANSI 50-2004, standards for diatomaceous earth filters and approve site-built or custom-built vacuum diatomite filters, if the diatomaceous earth filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum diatomaceous earth filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exits, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or equivalent standards covering such filters as determined by the department.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with a disinfectant feeder or feeders which conform to the National Sanitation Foundation, NSF/ANSI 50-2004, standards relating to adjusted output rate chemical-feeding equipment and flow through chemical feeding equipment for swimming pools, or be deemed equivalent by the department.

(2) A spa pool must be equipped with oxidation reduction potential controllers which monitor chemical demands, including pH and disinfectant demands, and regulate the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27(10). Supervisory water testing, calibration checks, inspection and

cleaning of sensor probes and chemical injectors must be performed in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the inspections, calibration checks, and cleaning of sensor probes must be done at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) Substances which are incompatible with chlorine may not be kept in the chlorine enclosure.

(c) Chlorine cylinders must be secured to prevent their falling over. An approved valve stem wrench must be maintained on the chlorine cylinder so the supply can be shut off quickly in case of emergency. Valve protection hoods and cap nuts must be kept in place except when the cylinder is connected.

(d) Doors to chlorine gas and equipment rooms must be labeled DANGER CHLORINE GAS in letters at least 4 inches, 10.16 centimeters, in height and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) An unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, must be readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) A public pool where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard chair(s) in accordance with Table 2. Lifeguard chair(s) shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, American Red Cross-approved rescue tube; a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a Utah Department of Health standard 27-unit first aid kit which includes the following items:

2 Units 1 inch adhesive compress.
2 Units 2 inch bandage compress.
2 Units 3 inch bandage compress.
2 Units 4 inch bandage compress.
2 Units 3 inch square plain gauze pads.
2 Units gauze roller bandage.
2 Units eye dressing packet.
1 Unit plain absorbent gauze, .5 sq. yard.
1 Unit plain absorbent gauze, 24 inches by 72 inches.
2 Units bandage tape.
1 Unit butterfly closures, 1 box.
1 Unit 3 inch ace bandage.
1 Unit assorted adhesive band-aids, 1 box.
2 Units triangular bandages.
1 Unit microshield.
1 Unit scissors.
1 Unit tweezers.
1 Unit latex gloves, 6 pairs per unit.

(a) The 27 unit first-aid kit must be kept filled, available and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. It must be maintained in good repair and operable condition. Lifesaving equipment may not be used or removed by anyone for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign must be placed in plain view and shall state: WARNING - NO LIFEGUARD ON DUTY and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least 4 inches high, 10.16 centimeters. In addition, the sign must also state CHILDREN 14 AND UNDER SHOULD NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must

have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Chair 1,000 through 2,999 sq. ft., 92.9 through 278.61 sq. meters, of surface area	1	None
Each additional 2,000 sq. ft., 185.8 sq. meters, of surface area or fraction	1 additional	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Life Pole or Shepherds Crook	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

(7) A spa pool is exempt from Section R392-302-22, except for Section R392-302-22(3).

(8) The water temperature in a spa pool may not exceed 105 degrees Fahrenheit.

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if it can be demonstrated to him that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, refer to Table 3 for illumination requirements.

TABLE 3

Underwater Illumination Requirements

Class	Application	Lamp lumens per square foot of pool surface area-Indoor	Lamp lumens per square foot of pool surface area-Outdoor	Illuminance Uniformity: Maximum to Minimum
I	International, Professional, Tournament Diving	100	60	2.0 : 1
II	College and High School Diving	75	50	2.5 : 1
III	High School Without Diving	50	30	3.0 : 1
IV	Recreational	30	15	4.0 : 1

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code, as adopted by the State.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

(i) For underwater lighting,

(ii) electrically powered automatic pool shell covers, and

(iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) All areas and fixtures within dressing rooms must be maintained in a clean and sanitary condition. Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.

(2) A separate dressing room must be provided for each sex. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.

R392-302-25. Toilets and Showers.

(1) The minimum number of toilets and showers for dressing room fixtures must be based upon the designed maximum bather load. Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used

exclusively by one sex. The minimum number of sanitary fixtures must be in accordance with Table 4.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets	
Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.
Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(2) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(3) One shower head for each sex must be provided for each 50 bathers or fraction thereof.

(4) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) Soap must be dispensed at all lavatories and showers. Soap dispensers must be constructed of metal or plastic. Use of bar soap is prohibited.

(6) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(7) At least one covered waste can must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) When a 4 foot, 1.22 meters, fence is not present as described in Subsection R392-302-14(3), then visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool or 5 feet, 1.53 meters, of the pool deck. Animals assisting handicapped individuals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) A public pool must be continuously disinfected by a process which meets all of the following requirements:

(a) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water.

(b) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use.

(c) Is compatible for use with other chemicals normally used in pool water treatment.

(d) Does not create harmful or deleterious physiological effects on bathers if used according to manufacturer's specifications.

(e) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(2) If the active disinfecting agent is chlorine, the unstabilized free chlorine residual, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(3) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten parts per million, but may not exceed 100 parts per million and the free residual chlorine, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet concentrations levels shown in Table 6, depending upon the pH of the water.

(4) If disinfection of the pool water is accomplished by bromine or iodine, the disinfectant must be within the ranges specified in Table 6.

(5) An easy to operate, pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.2 parts per million, must be provided at each public pool. If stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 parts per million must be provided.

(a) Test kit reagents may not be used if they have exceeded their expiration dates.

(6) Circulation equipment must be operated 24 hours continuously during the operating seasons.

(7) The water must have sufficient clarity at all times so that a black disc, 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool. The facility must be closed immediately if this requirement is not met.

(8) In a public pool, the difference between the total chlorine and the free chlorine must not be greater than 0.5 parts per million as determined by the diethyl-p-phenylene diamine, leuco crystal violet tests or other test method approved by the department.

(a) If the concentration of combined residual chlorine is greater than 0.5 parts per million the pool water must be breakpoint chlorinated to oxidize and reduce the concentration of combined chlorines.

(9) A water sample must be collected from a pool at least once per month or as otherwise directed by the local health department, while it is in use, and must be submitted to a laboratory approved by the department to perform Safe Drinking Water Program testing.

(a) The laboratory shall subject the sample to the standard 35 degree Celsius heterotrophic plate count and test for coliform organisms utilizing either a membrane filter test, a multiple tube fermentation test, or a Colilert test.

(b) The testing laboratory must promptly report the results of such analysis to the local health department having jurisdiction and to the facility operator. When requested, the lab or local health department shall report the results of such analysis to the Utah Department of Health.

(c) When less than two samples per month are collected and submitted for bacteriological analysis, the local health department shall conduct a follow-up inspection for each failing sample to identify the causes for the sample failure. The local health department shall conduct a follow-up within three working days following the reporting of the sample failure to the local health department.

(10) Not more than 15 percent of the samples covering a four month period of time may fail bacteriological quality standards. A seasonal or other pool in operation less than four months may only fail bacteriological quality standards with an initial pre-opening sample prior to the opening of the operating season. If a seasonal or other pool in operation less than four

months in a year is sampled on a once per month basis, then failure of any bacteriological water quality sample shall require submission of a second sample within one working day after the sample report has been received.

(a) A pool water sample fails bacteriological quality standards if it:

(i) contains more than 200 bacteria per milliliter, as determined by the standard 35 degrees Celsius heterotrophic plate count;

(ii) shows positive test, confirmed test, for coliform organisms in any of the five 10-milliliter portions of a sample; or

(iii) contains more than 1.0 coliform organisms per 50 ml if the membrane filter test is used; or

(iv) indicates a positive MMO-MUG type test approved by the EPA.

(11) Pool water temperatures, excluding spas and special purpose pools, must meet the following requirements:

(a) Pool water temperatures for general use must be within the range of 82 degrees Fahrenheit, 27.8 degrees Celsius, to 86 degrees Fahrenheit, 30.0 degrees Celsius.

(b) The water in a pool dedicated primarily for swim training and high exertion activities must be within the temperature range of 78 degrees Fahrenheit, 25.6 degrees Celsius, to 82 degrees Fahrenheit, 27.8 degrees Celsius to reduce safety hazards associated with hyperthermia.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 25.6 degrees Celsius.

(d) The local health department may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

(12) Total dissolved solids in a public pool may not exceed 2,500 parts per million.

(13) Total alkalinity must be with the range from 100-125 parts per million for plaster pools, 80-150 parts per million for a spa pool, and 125-150 parts per million for a painted or fiberglass pool.

(14) A calcium hardness of at least 200 parts per million must be maintained.

(15) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

Formula for Calculating the Saturation Index: SI = pH + TF + CF + AF - 12.1 where SI means saturation index, TF means temperature factor, CF means calcium factor, ppm means parts per million, deg F means degrees Fahrenheit, and AF means alkalinity factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	ppm	CF	ppm	AF
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1,000	2.6	1,000	3.0

If the SATURATION INDEX is 0, the water is chemically in balance.
If the INDEX is a minus value, corrosive tendencies are indicated.
If the INDEX is a positive value, scale-forming tendencies are indicated.
EXAMPLE: Assume the following factors:
pH 7.5, Temperature 80 degrees F, 19 degrees C, CalciumHardness 235
Total Alkalinity 100
1- pH - 7.5
2- TF - 0.7
3- CF - 1.9
4- AF - 2.0
TOTAL: 12.1 - 12.1 = 0.0
This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (parts per million)	4.0(1)	4.0(1)	4.0(1)
Iodine (parts per million)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (parts per million hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (parts per million)	2,500	2,500	2,500
Cyanuric Acid (parts per million)	10 to 100	10 to 100	10 to 100
Maximum Temperature degrees Fahrenheit)	105	105	105
Calcium Hardness (parts per million)	200(1)	200(1)	200(1)
Total Alkalinity (parts per million)	Plaster Pools		100 to 125 80 to 150 100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, parts per million)	0.5	0.5	0.5

Note (1): Minimum Value

R392-302-28. Cleaning Pools.

(1) Visible dirt on the bottom of the pool must be removed at least once every 24 hours or more frequently as needed to keep the pool free of visible dirt.

(2) The pool water surface must be cleaned as often as needed to keep the pool free of visible scum or floating matter.

(3) Pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms, must be kept clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the

hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

(1) Each public pool must be operated by at least one qualified operator as evidenced by a current National Swimming Pool Foundation Certified Pool Operator, CPO, certification; a National Recreation and Parks Association Aquatic Facility Operator, AFO, certification; or an equivalent certification approved by the department.

(a) Approved certifications are valid under this rule for no more than five years from the date of issue.

(b) A local health department may deny recognition of the certification of a pool operator for cause, including failure to comply with the requirements of this rule, or creating or allowing undue health or safety hazards. The local health department shall notify the department of any denials. A denial of recognition of certification is effective in the entire state. The operator may overcome the denial by obtaining a new certification from a certifying authority.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(9) fail bacteriological quality standards as defined in Section R392-302-27(10), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) The pool operator shall measure and record the level of disinfectant residuals, pH, and pool water temperature at least four times a day. If oxidation reduction potential technology is used in accordance with this rule, the pool operator may reduce water testing to once per day minimum.

(b) The pool operator shall read flow rate gauges and record the pool circulation rate at least four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(7) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool or a private pool if direct fees are charged, public funds support the operation of the pool, or if the pool is used for public uses including swimming lessons, scuba diving instruction, and aquatic competitions. If a pool is normally exempt from the requirement to provide lifeguard services, but is used for some public uses, then lifeguard services are required during the period of public use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) A lifeguard must meet each of the following:

(a) Be trained and certified by the American Red Cross, or an equivalent program as approved by the department in Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2).

(c) Have full authority to enforce all rules of safety and sanitation.

(4) A lifeguard may not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(5) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(6) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 15 minutes with a work break of at least 10 minutes every hour to maintain mental alertness and to prevent mental and physical fatigue.

(7) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) A person having a communicable disease transmissible by water must be excluded from public pools. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Easily readable placards embodying the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and offices.

(f) Diapers shall be changed only in restrooms or changing stations and shall not be changed at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person must undergo a cleansing shower before returning to the pool.

(8) A spa pool must have an easily readable caution sign mounted adjacent to the entrance to the spa or hot tub which contains the following information:

(a) The word "caution" centered at the top of the sign in large, bold letters at least two inches in height.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(9) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

R392-302-31. Special Purpose Pools.

(1) Special purpose pools must meet the requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(2) Slide flumes must meet the following requirements for design, materials, construction, and maintenance:

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(3) The design of water slides or vehicle slides must incorporate the following clearances from the flumes:

(a) A distance between the side of a slide flume exit and a splash pool side wall of at least 4 feet, 1.22 meters.

(b) A distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) A vehicle slide must maintain the following clearances:

(e) A distance between the side of the flume exit and the pool side wall of at least 6 feet, 1.83 meters.

(f) A distance between nearest sides of adjacent vehicle slide flume exits of at least 8 feet, 2.44 meters.

(g) A distance between the flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(5) splash pools must meet the following depth requirements:

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(6) Pump reservoir areas must be accessible for cleaning and maintenance by a 3 foot, 91.44 centimeters, minimum width walkway.

(7) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(8) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(9) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(10) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(11) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(12) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all National Sanitation Foundation, NSF/ANSI 50-2004, Section 6. Centrifugal Pumps, standards for pool pumps.

(13) Flume supply service pumps must have check valves on all suction lines.

(14) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(15) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(16) A caution sign must be mounted adjacent to the entrance to a water slide that states at least the following warnings:

(a) The word caution centered at the top of the sign in large bold letters at least two inches in height.

(b) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

(c) No head first sliding at any time.

(d) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

(e) Only one person at a time may travel the slide.

(f) Obey instructions of lifeguards and other staff at all times.

(g) Keep all parts of the body within the flume.

(h) Leave the splash pool promptly after exiting from the slide.

R392-302-32. Hydrotherapy Pools.

(1) Unless the pool is drained, cleaned and sanitized after each individual use, a hydrotherapy pool shall at all times comply with R392-302-27-Disinfection and Quality of Water, R392-302-28-Cleaning of Pools and R392-302-29-Supervision of Pools.

(2) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(3) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(4) A local health officer may grant an exception to section R392-302-32(1) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-33. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-34. Cryptosporidiosis Watches and Warnings.

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign that meets the requirements of this section, the standard for "notice" signs established in ANSI Z353.2-2002, which is adopted by reference, and the approval of the local health officer to assure compliance with this section and the ANSI standard. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section and the ANSI standard for 10-foot viewing is available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high. The sign may need to be larger, depending on the placement of the sign, to meet the ANSI standard.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 1.0 centimeters high and include the following four bulleted statements in black letters:

-All with diarrhea in the past 2 weeks shall not use the pool.

-All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

-All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

-Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

(a) maintain the disinfectant concentration within the range between two ppm (four ppm for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five ppm (10 ppm for bromine);

(b) maintain the pH between 7.2 and 7.5; and

(c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 ppm.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-34(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-34(4)(b).

(b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 ppm minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five ppm. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.

(c) A full flow ultraviolet treatment system that meets the requirements of National Sanitation Foundation standard

NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of National Sanitation Foundation standard NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

(e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

(i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-34(4)(a);

(ii) assure safety for swimmers and pool operators; and

(iii) comply with all other applicable rules and federal regulations.

Table 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 ppm	15,300 minutes (255 hours)
10 ppm	1,530 minutes (25.5 hours)
20 ppm	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

KEY: pools, spas, water slides
October 22, 2009 26-15-2
Notice of Continuation March 22, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-7A. Medicaid Certification of New Nursing Facilities.
R414-7A-1. Administrative Proceedings.

Adjudicative proceedings for decisions by the Division of Health Care Financing made pursuant to Section 26-18-504 are informal and conducted accordance with R410-14.

KEY: Medicaid
June 3, 2005 26-1-5
Notice of Continuation October 20, 2009 26-18-504(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-7B. Nurse Aide Training and Competency Evaluation Program.
R414-7B-0. Authority and Purpose.

A. Authority

The nurse aide training and competency evaluation program is authorized by the Omnibus Budget Reconciliation Act (OBRA) of 1987, P.L. 100-203, Section 4211(b)(5)(A-G),(e)(2)(1-2),(f)(2)(A-B), which is hereby adopted and incorporated by reference.

B. The purpose of the nurse aide training and competency evaluation program is to provide quality services to residents of nursing facilities by nurse aides who are able to assist residents in maintaining independence, demonstrate sensitivity to residents' needs, and demonstrate observational and documenting skills that are needed in the assessment of residents' health, physical condition, and well-being.

R414-7B-1. Definitions as used in this chapter:

A. "Nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed health professional or who volunteers to provide such services without monetary consideration.

B. "Licensed health professional" means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

C. "Nursing facility" means an institution licensed and certified to provide long-term care, and includes those facilities previously or currently licensed and Medicaid-certified as an Intermediate Care Facility (ICF) or a Skilled Nursing Facility. An intermediate care facility for the mentally retarded (ICF/MR) is not included in this definition.

D. "Resident" means an individual residing in and receiving medical long-term nursing services in a Medicaid-certified nursing facility.

E. "Train-the-trainer program" means a state-approved program which consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

F. "Retraining" means required training for those nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program.

G. "Competency evaluation" means a written or oral examination which addresses each requirement of OBRA 1987 for nurse aides, and a demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

H. "Testing out or challenging the test" means that those individuals acting as nurse aides in nursing facilities as of July 1, 1989, may be determined competent by taking the competency evaluation without enrolling in the approved nurse aide training course.

I. "Deemed competency" means that those individuals who, prior to January 1, 1989, completed a nurse aide training program that met the State's requirements at the time it was offered, may be determined to have completed a training and competency evaluation program and be certified as competent.

J. "State survey agency" means the Bureau of Facility Review in the Division of Health Care Financing, which is responsible for certification of nursing facilities and for conducting surveys to determine compliance with Medicaid requirements.

R414-7B-2. Procedures for Achieving Certification.

A. All nurse aides employed by a nursing facility after July 1, 1989, shall complete the nurse aide training approved by the State Office of Vocational Education, and pass the nurse aide competency evaluation or be enrolled in the nurse aide training program by January 1, 1990.

B. A nursing facility must make the necessary provision for the individual to participate in and complete the competency evaluation by January 1, 1990.

C. Deemed competency

1. Individuals who were certified as nurse aides by the State Office of Vocational Education before January 1, 1989, shall be deemed to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

2. It shall be the responsibility of the nursing facility to provide this in-service training on mental retardation and mental illness and to notify the State Office of Vocational Education when it is completed.

D. Testing out

Those aides employed by a nursing facility on or before July 1, 1989, who have not been deemed certified, if they elect to test out, shall be determined competent by:

1. successfully testing out on the competency evaluation, including the written and skills components of the evaluation, provided by the State Office of Vocational Education or a State Office of Vocational Education-approved program which meets federal requirements; and

2. presenting proof of employment at a nursing facility.

E. Nurse aides certified in other states

Nurse aides certified in other states before July 1, 1989, may be deemed as certified nurse aides in Utah if they complete the approved in-service training on mental retardation and mental illness provided by the nursing facility. After July 1, 1989, they may be deemed as certified nurse aides in Utah if they have documentation of certification in another state.

R414-7B-3. Competency Evaluation.

A. Administration of the competency evaluation

1. Vocational centers and community colleges are approved by the State Office of Vocational Education to provide competency evaluations to nurse aides, using both written or oral examinations and demonstration of skills.

a. The written examination shall be administered by the vocational centers and community colleges approved by the State Office of Vocational Education with the following exception. Nursing facility personnel may proctor the written examination when the State Office of Vocational Education is confident that the competency evaluation program is secure from tampering, is standardized and scored by a testing, education or other organization approved by the State Office of Vocational Education, and requires no actual administration or scoring by facility personnel.

b. The skills demonstration component shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and must be administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age. The skills demonstration shall be administered only by the State Office of Vocational Education.

2. If the individual fails to satisfactorily complete the evaluation, the individual must be advised of the areas in which he was inadequate, and that he may take the evaluation a maximum of three times.

3. Any individual who takes the competency evaluation must be advised in advance that a record of the successful completion of the evaluation shall be included in the nurse aide registry, and shall be required to sign a Release of Information form which indicates the nurse aide's understanding of information that is required to be entered into the nurse aide registry.

4. The State Office of Vocational Education shall

periodically update and validate the competency evaluation.

B. Content of the Competency Evaluation

1. Written or oral examination

The State Office of Vocational Education shall establish a written or oral examination (in the case of individuals with limited literacy in English) that addresses each requirement as prescribed in OBRA 1987. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system which maintains the integrity of both the pool of questions and the individual evaluations.

2. Demonstration of skills

The competency evaluation must include demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

C. Requirements for the skills training component

1. For the skills training component of the evaluation, a performance record shall be developed for each nurse aide training program of major duties and skills taught which consist of, at a minimum:

a. a listing of the duties and skills expected to be learned in the program;

b. a record documenting when the aide performs this duty or skill;

c. documentation of satisfactory or unsatisfactory performance;

d. the date of the performance;

e. the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his employer shall receive a copy of this record. If the individual did not successfully perform all the duties and skills on this performance record, he shall receive supervision for all duties and skills not satisfactorily performed until such satisfactory performance is confirmed.

3. The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance of five tasks, all of which are included in the performance record. These five tasks are selected for each aide from a pool of evaluation items ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty.

R414-7B-4. Nurse Aide Training Program.

A. Administration

1. Training and competency evaluation programs shall be administered through the State Office of Vocational Education in accordance with a contract between the Division of Health Care Financing and the Department of Education.

2. All agencies conducting nurse aide training programs shall be approved by the State Office of Vocational Education.

3. Each area vocational center, community college, or nursing facility that conducts nurse aide training programs shall designate a qualified registered nurse to oversee training and instruction.

B. Training program approval and review

1. Process

a. The State Office of Vocational Education shall review and render a determination regarding approval or disapproval of any nurse aide training when requested to do so by a Medicare or Medicaid-participating nursing facility. The State Office of Vocational Education, at its option, may also agree to review and render approval or disapproval of any nurse aide training program when requested to do so by another entity.

b. The State Office of Vocational Education must, within 30 days of the date of an acceptable request, either advise the requestor of the State Office of Vocational Education's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

c. Nursing facilities may apply for approval of a nurse aide training program by completing an application provided by the State Office of Vocational Education.

2. Requirements

a. The State Office of Vocational Education shall approve any nurse aide training program which meets the criteria specified in OBRA 1987, the federal Health Care Financing Administration's guidelines, and guidelines designated by the State Division of Health Care Financing.

b. Minimal content requirements must be met for the nurse aide training program to be approved by the State Office of Vocational Education. The nurse aide training program must consist of no less than 80 hours of training. The curriculum of the nurse aide training program must include at least the following subjects:

1) at least 16 hours of training in the following areas prior to any direct contact with a resident:

a) communication and interpersonal skills;

b) infection control, including AIDS;

c) safety and emergency procedures;

d) promoting residents' independence;

e) respecting residents' rights;

f) basic nursing skills.

2) The skills training of at least 16 hours shall ensure that each nurse aide, at a minimum, demonstrates competencies in the following areas:

a) Basic nursing skills:

(1) caring for residents when death is imminent;

(2) taking and recording vital signs;

(3) measuring and recording height;

(4) caring for residents' environment;

(5) recognizing abnormal signs and symptoms of common diseases and conditions.

b) Personal care skills, including, but not limited to:

(1) bathing, including mouth care;

(2) grooming;

(3) dressing;

(4) toileting;

(5) assisting with eating and hydration;

(6) proper feeding techniques; and

(7) skin care.

c) Basic restorative services:

(1) use of assistive devices in ambulation, eating, and dressing;

(2) maintenance of range of motion;

(3) proper turning and positioning in bed and chair;

(4) bowel and bladder training;

(5) care and use of prosthetic and orthotic devices; and

(6) transfer techniques;

d) Mental health and social service skills:

(1) modifying his own behavior in response to the resident's behavior;

(2) identifying developmental tasks associated with the aging process;

(3) training the resident in self-care according to the resident's ability;

(4) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(5) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and

(6) using the resident's family as a source of emotional support.

e) Residents' rights:

(1) providing privacy and maintaining confidentiality;

(2) promoting the residents' rights to make personal choices to accommodate their needs;

(3) giving assistance in solving grievances;

(4) providing needed assistance in getting to, and participating in, resident and family groups and other activities;

(5) maintaining care and security of residents' personal possessions;

(6) providing care which maintains residents free from abuse, mistreatment, or neglect; reporting any instances of such poor care to appropriate facility staff; and

(7) maintaining the residents' environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

c. Qualifications of instructors:

1) Non-nursing facility-based programs:

Nurse aide training and competency evaluation programs must have a program coordinator or primary instructor who is a registered nurse with at least two years of experience in caring for the elderly or chronically ill of any age.

2) Nursing facility-based programs:

a) The program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA 1987, Section 4211, requirements.

b) The primary instructor must be a licensed nurse with at least one year of experience in a nursing facility.

3) The program coordinator or primary instructor must have successfully completed a "train-the-trainer" type program approved by the State Office of Vocational Education or have demonstrated competence to teach adult learners as defined by the State Office of Vocational Education.

4) Qualified personnel from the health professions may supplement the program coordinator or primary instructor in the case of non-facility programs, or the program instructor in the case of facility-based programs, and as program trainers in both facility-based and non-facility-based programs;

5) Program trainers may include: registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.

6) To function as program trainers, these health professionals must have a minimum of one year of current experience in the care of the elderly or chronically ill of any age, or have equivalent experience, and must be currently licensed, registered or certified in their field.

7) Licensed practical nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have at least two years of experience in caring for the elderly or chronically ill of any age, or have equivalent experience.

8) Instructor-to-student ratio

A student-to-instructor ratio of 15:1 for clinical instruction and 30:1 for theory instruction shall not be exceeded.

9) Facilities

A classroom must be provided that has the following:

a) adequate space and furniture for the number of students;

b) adequate lighting and ventilation;

c) comfortable temperature;

d) appropriate audio-visual equipment;

e) skills lab equipment to simulate a resident's unit;

f) clean and safe environment;

g) appropriate textbooks and reference materials.

C. Compliance reviews

1. Initial post-approval and ongoing reviews

After the initial approval of a training and competency evaluation program, an initial one-year post-approval review shall be done by the State Office of Vocational Education to determine the program's compliance with the OBRA 1987 requirements.

2. After the one-year review, an on-site review shall be completed at least every two years by the State Office of Vocational Education.

3. A self-evaluation shall be submitted by the program provider to the State Office of Vocational Education each year that an on-site review is not scheduled.

4. Minimum program review standards

The training and evaluation program review must include:

a. skills training experience;

b. maintenance of qualified faculty members for both classroom and skills portions of the training and competency evaluation programs;

c. maintenance of the security of the competency evaluation examinations;

d. a record of complaints received about the program;

e. a record that each nursing facility has provided certified nurse aides with six hours of staff development training per quarter with compensation for the training;

f. curriculum content that meets federal and state requirements; and

g. classroom facilities that meet federal requirements for nurse aide training programs.

5. Division of Health Care Financing shall enforce the standards for nurse aide training and competency evaluation described in OBRA 1987, Section 4211, which are hereby adopted and incorporated by reference.

6. In addition to the required nurse aide training, all nurse aides shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include, but is not limited to, an explanation of:

1) the organizational structure of the facility;

2) the facility policies and procedures;

3) the philosophy of care of the facility;

4) the description of the resident population; and

5) the employee rules.

R414-7B-5. Nurse Aide Registry.

A. A central nurse aide registry has been developed and shall be maintained under the direction of the State Office of Vocational Education. This registry must include identification of individuals who have successfully completed and passed the nurse aide training and competency evaluation program with a passing score of 75 percent or above.

B. Any organization responsible for the nurse aide competency evaluation program must report to the nurse aide registry within 30 days the names of all individuals who have satisfactorily completed the nurse aide training and competency evaluation program.

C. The registry shall also document substantiated allegations of resident neglect, abuse, or misappropriation of resident property by a nurse aide in a nursing facility, including an accurate summary of the findings. If the nurse aide disputes the findings, this information shall also be entered into the registry.

D. The Division of Health Care Financing's Bureau of Facility Review shall investigate such complaints. A nurse aide shall be entitled to a hearing, to be conducted through the Division of Health Care Financing, before a substantiated claim can be entered against the nurse aide.

E. The Division of Health Care Financing shall enforce the standards for the nurse aide registry described in OBRA 1987, Sections 4211 and 4212, which are hereby adopted and incorporated by reference.

R414-7B-6. Limitations.

A. The State Office of Vocational Education may not approve a facility-based nurse aide training program if, in the prior two years, the facility's participation in the Medicare and

Medicaid programs has been terminated.

B. Nurse aide training programs must be reviewed and reapproved at least every two years.

C. The competency evaluation, both written and skills components, may not be administered by a skilled nursing facility which participates in Medicare nor a nursing facility which participates in Medicaid.

D. After January 1, 1990, nursing facilities may not use nurse aides for more than four months unless they have completed the nurse aide training and competency evaluation program.

E. After January 1, 1990, a nursing facility may not permit an individual to work as a nurse aide for monetary compensation unless the facility has checked the credentials of the nurse aide through the nurse aide registry.

F. Upon review of program performance standards, those programs not meeting minimum requirements and which do not provide an acceptable plan for correcting deficiencies shall be terminated from the program.

G. Retraining

Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program shall be required to undergo necessary retraining.

KEY: medicaid

1989	**26-1-4.1**
Notice of Continuation October 20, 2009	**26-1-5**
	26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-11. Podiatry Services.
R414-11-1. Introduction and Authority.

Podiatry services are authorized by 42 CFR 440.60 and include the examination, diagnosis, or treatment of the foot. Podiatry services are optional and provided in accordance with 42 CFR 440.225.

R414-11-2. Definitions.

In this rule, "Subluxation" means a structural misalignment or partial dislocation of a joint or joints in the feet.

R414-11-3. Client Eligibility Requirements.

Podiatry services are available to categorically and medically needy individuals.

R414-11-4. Service Coverage.

(1) The Department covers the following podiatry services:
(a) foot incision and drainage of simple abcess;
(b) foot skin debridement;
(c) cutting benign or premalignant lesions;
(d) treatment of nail plate;
(e) injections for ganglion cysts;
(f) foot bone excisions;
(g) walking cast, Unna boots;
(h) radiologic exam of ankle or foot; and
(i) office visits.
(2) The Department covers the following podiatry-related medical supplies and equipment:
(a) shoes attached to a brace or prosthesis;
(b) shoes specially constructed to provide for a totally or partially missing foot; and
(c) additional supplies not regularly used for office surgery procedures.
(3) Shoe repair is covered if it relates to external modification of an existing shoe to accommodate a leg length discrepancy requiring a shoe build up of one inch or more.

R414-11-5. Limitations.

(1) Service limitations that apply to physicians also apply to podiatrists.
(2) Treatment of a fungal (mycotic) infection of the toenail is limited to recipients with documented clinical evidence of mycosis that shows inflammation, infection, erythema, or marked limitation of ambulation.
(3) Podiatry services in long-term care facilities are covered with the following limitations:
(a) podiatry visits are limited to once every 60 days;
(b) debridement of mycotic toenails is limited to once every 60 days;
(c) trimming corns, warts, callouses, or nails is limited to once every 60 days;
(d) podiatry visits that include only evaluation and management are not covered;
(4) Medicaid does not cover the administration of general anesthesia and foot amputations by podiatrists.
(5) The removal of corns, warts, or callouses is limited to patients endangered by diabetes, arteriosclerosis or Buerger's disease.

R414-11-6. Non-Covered Services.

(1) The following preventive or routine foot care services are not covered:
(a) the trimming, cutting, clipping, or debridement of nails outside of long-term care facilities;
(b) hygienic and preventive maintenance care, such as cleaning and soaking of the feet, the use of massage or skin creams to maintain skin tone of either ambulatory or bedfast patients, and any other service performed in the absence of localized illness or injury;
(c) any application of topical medication;
(2) Supportive devices that include arch supports, foot pads, foot supports, orthotic devices, or metatarsal head appliances are not covered.
(3) The following subluxation services are not covered:
(a) surgical correction of a subluxated foot structure, or surgical procedures performed to improve foot function and alleviate symptomatic conditions;
(b) treatment that includes evaluations and prescriptions of supporting devices, and the local condition of flattened arches regardless of the underlying pathology.
(4) Internal modification of a shoe is not covered.
(5) Shoes or other supportive devices for the feet that are not an integral part of a leg brace or prosthesis are not covered.
(6) Special shoes are not covered. These include:
(a) mismatched shoes (unless attached to a brace);
(b) shoes to support an overweight individual;
(c) "orthopedic" or "corrective" trade name or brand name shoes; and
(d) "athletic" or "walking" shoes.
(7) Personal comfort items such as "cookies" or other comfort accessories are not covered.

R414-11-7. Reimbursement for Podiatry Services.

(1) Reimbursement for services is limited to one podiatry office visit per day.
(2) A podiatrist may bill for laboratory procedures necessary for diagnosis and treatment of the patient if equipment necessary for the laboratory procedure is available in the podiatrist's office. Laboratory services requested by a podiatrist but provided by an independent laboratory or hospital outpatient laboratory must be billed directly by the laboratory.
(3) Palliative care is included in the specific service and must be billed by that service only, not through the use of an office call procedure code.
(4) Payments are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients. Fees are established by discounting historical charges, and by professional judgment to encourage efficient, effective and economical services.

R414-11-8. Copayment Policy.

(1) The Department requires a copayment in the amount of $3 for each podiatry visit when a non-exempt Medicaid client as designated on his Medicaid card, receives a podiatry service. Medicaid limits the out-of-pocket expense of the Medicaid client to $100 annually, which is a total aggregate cost for all Medicaid services.
(2) Medicaid deducts the copayment amount, limited to one amount per day from the reimbursement paid to the provider for each podiatry visit.
(3) The provider should collect the copayment amount from the Medicaid client for each podiatry visit.
(4) Medicaid clients in the following categories are exempt from copayment requirements:
(a) children;
(b) pregnant women;
(c) institutionalized individuals; and
(d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance.

KEY: Medicaid
July 14, 2006 26-1-5
Notice of Continuation October 21, 2009 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-31. Inpatient Psychiatric Services for Individuals Under Age 21.
R414-31-1. Introduction and Authority.

(1) Except for certain age groups, Medicaid excludes coverage of patients in an institution for mental disease. The State has elected to cover these inpatient psychiatric services for individuals under age 21 in accordance with the conditions set forth below.

(2) 42 USC 1396d(a)(16) and (h) authorizes the provision of this service under a state's Medicaid program.

R414-31-2. Client Eligibility Requirements.

Categorically and medically needy Medicaid recipients are eligible for this service if the service is provided before the recipient reaches age 21 or, if the recipient was receiving the services immediately before the recipient reached age 21, before the earlier of the following: (1) the date the recipient no longer requires the services; or (2) the date the recipient reaches age 22.

R414-31-3. Program Access Requirements.

(1) Before admission for inpatient psychiatric services or before authorization for Medicaid payment, a facility physician must make a medical evaluation of the recipient's need for care in the hospital and certify that inpatient services are needed.

(2) The certification must document that:

(a) ambulatory care resources available in the community do not meet the treatment needs of the recipient;

(b) proper treatment of the recipient's psychiatric condition requires services on an inpatient basis or under the direction of a physician; and

(c) the services can reasonably be expected to improve the recipient's condition or prevent further regression so that services will no longer be needed.

(3) The Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Division of Health Systems Improvement, under the Department of Health, reviews the medical evaluation and certification and determines that the client meets certification of need requirements.

R414-31-4. Service Coverage.

(1) Services must be provided under the direction of a physician and must be based on a plan of care that includes an integrated program of therapies, activities, and experiences designed to meet the recipient's treatment objectives. The plan of care must be a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary.

(2) At the appropriate time, the physician must develop post-discharge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's treatment objectives.

R414-31-5. Qualified Providers.

Inpatient psychiatric services for recipients under age 21 are provided only by the Utah State Hospital.

R414-31-6. Reimbursement for Services.

The Department pays the lower amount of costs or charges and uses Medicare regulations to define allowable costs.

KEY: Medicaid
June 15, 2005 26-1-5
Notice of Continuation October 5, 2009 26-18-3

R414. Health, Health Care Financing,Coverage and Reimbursement Policy.
R414-33B. Substance Abuse Targeted Case Management.
R414-33B-1. Introduction and Authority.

(1) This rule outlines targeted case management services available to Medicaid clients diagnosed with a substance abuse disorder.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 USC section 1396n(g) which authorizes targeted case management services.

R414-33B-2. Definitions.

In this rule, "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99

R414-33B-3. Client Eligibility Requirements.

(1) Targeted case management is available to Medicaid clients with substance abuse disorders who meet the categorically and medically needy eligibility categories and who are enrolled in the Traditional Medicaid Plan.

(2) Targeted case management is available to the children of Medicaid clients who are at risk of developing a substance abuse disorder due to the client's history of substance abuse and current substance abuse.

R414-33B-4. Program Access Requirements.

(1) Targeted case management services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) Targeted case management may be provided to a Medicaid client who is diagnosed with a substance abuse disorder for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the individual requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

(3) Targeted case management may be provided to a child of a Medicaid client for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the child is at risk of developing a substance abuse disorder due to parental history of substance of substance abuse or current substance abuse.

(b) the child requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(c) there is reasonable indication that the child will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

R414-33B-5. Service Coverage.

(1) Medicaid covers:

(a) client assessment to determine service needs, including activities that focus on needs identification to determine the need for any medical, educational, social, or other services. Assessment activities include taking client history, identifying the needs of the client and completing related documentation, gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the client;

(b) development of a written, individualized, coordinated case management service plan based on information collected through an assessment that specifies the goals and actions to address the client's medical, social, educational and other service needs. This includes input from the client, the client's authorized health care decision maker, family, and other agencies knowledgeable about the client, to develop goals and identify a course of action to respond to the client's assessed needs;

(c) referral and related activities to help the client obtain needed services, including activities that help link the client with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the client;

(d) coordinating the delivery of services to the client, including CHEC screening and follow-up;

(e) client assistance to establish and maintain eligibility for entitlements other than Medicaid;

(f) monitoring and follow-up activities, including activities and contacts that are necessary to ensure the targeted case management service plan is effectively implemented and adequately addressing the needs of the client, which activities may be with the client, family members, providers or other entities, and conducted as frequently as necessary to help determine whether services are furnished in accordance with the client's case management service plan, whether the services in the case management service plan are adequate, whether there are changes in the needs or status of the client, and if so, making necessary adjustments in the case management service plan and service arrangements with providers;

(g) contacting non-eligible or non-targeted individuals when the purpose of the contact is directly related to the management of the eligible individual's care. For example, family members may be able to help identify needs and supports, assist the client to obtain services, and provide case managers with useful feedback to alert them to changes in the client's status or needs;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services; and

(i) monitoring the client's progress and continued need for targeted case management and other services.

(2) The agency may bill Medicaid for the above activities only if:

(a) the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan; and

(b) there are no other third parties liable to pay for services, including reimbursement under a medical, social, educational, or other program.

(3) Covered case management service provided to a hospital or nursing facility patient is limited to a maximum of five hours per admission.

(4) Medicaid does not cover:

(a) documenting targeted case management services with the exception of time spent developing the written case management needs assessment, service plans, and 180-day service plan reviews;

(b) teaching, tutoring, training, instructing, or educating the client or others, except when the activity is specifically designed to assist the client, parent, or caretaker to independently obtain client services. For example, Medicaid does not cover client assistance in completing a homework assignment or instructing a client or family member on

nutrition, budgeting, cooking, parenting skills, or other skills development;

(c) directly assisting with personal care or daily living activities that include bathing, hair or skin care, eating, shopping, laundry, home repairs, apartment hunting, moving residences, or acting as a protective payee;

(d) routine courier services. For example, running errands or picking up and delivering food stamps or entitlement checks;

(e) direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred. For example, providing medical and psychosocial evaluations, treatment, therapy and counseling, otherwise billable to Medicaid under other categories of service;

(f) direct delivery of foster care services that include research gathering and completion of documentation, assessing adoption placements, recruiting or interviewing potential foster care placements, serving legal papers, home investigations, providing transportation, administering foster care subsidies, or making foster care placement arrangements;

(g) traveling to the client's home or other location where a covered case management activity occurs, nor time spent transporting a client or a client's family member;

(h) services for or on behalf of a non-Medicaid eligible or a non-targeted individual if services relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care. For example, Medicaid does not cover counseling the client's sibling or helping the client's parent obtain a mental health service;

(i) activities for the proper and efficient administration of the Medicaid State Plan that include client assistance to establish and maintain Medicaid eligibility. For example, locating, completing and delivering documents to a Medicaid eligibility worker;

(j) recruitment activities in which the mental health center or case manager attempts to contact potential service recipients;

(k) time spent assisting the client to gather evidence for a Medicaid hearing or participating in a hearing as a witness; and

(l) time spent coordinating between case management team members for a client.

R414-33B-6. Qualified Providers.

Targeted case management services must be provided by an individual who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (a); or

(3) a licensed practical nurse or a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33B-7. Reimbursement Methodology.

The Department pays the lower of the amount billed and the rate on the fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
September 30, 2009 26-18-3
Notice of Continuation October 14, 2009

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-34. Substance Abuse Services.
R414-34-1. Introduction and Authority.

(1) This rule outlines the program designed to evaluate and treat individuals with substance abuse disorders.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed.

R414-34-2. Definitions.

In this rule:

(a) "Diagnostic services" means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of substance abuse disorder in a client.

(b) "Rehabilitative services" means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's substance abuse disorder and restoration of the client to his best possible functional level.

(c) "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99.

R414-34-3. Client Eligibility Requirements.

Substance abuse treatment is available to any categorically or medically needy Medicaid client.

R414-34-4. Program Access Requirements.

(1) Diagnostic and rehabilitative substance abuse services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) The substance abuse treatment program must evaluate the client to determine if:

(a) the client carries a primary diagnosis of a substance abuse disorder and requires substance abuse treatment services; or

(b) the client 's child requires services to reduce the child's risk of developing a substance abuser disorder.

R414-34-5. Service Coverage.

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative substance abuse services includes the following:

(a) psychiatric diagnostic interview examination;
(b) alcohol and drug assessment by a non-physician;
(c) psychological testing;
(d) individual psychotherapy;
(e) group psychotherapy;
(f) individual psychotherapy with medical evaluation and management services;
(g) family psychotherapy with client present;
(h) family psychotherapy without client present;
(i) therapeutic behavioral services;
(j) pharmacologic management;
(k) individual skills training and development;
(l) psychosocial rehabilitative services; and
(m) intensive psychosocial rehabilitative services for children through the month of their thirteenth birthday.

(3) Medicaid adult clients in the Non-Traditional Medicaid Plan have the following service exclusions:

(a) hypnosis, occupational, and recreational therapy; and
(b) office calls in conjunction with medication management for repetitive therapeutic injections; and

(4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

R414-34-6. Qualified Providers.

Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, or a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (1) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsections (1) or (2).

R414-34-7. Reimbursement Methodology.

The Department pays the lower of the amount billed or the rate on the substance abuse treatment providers' fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
February 1, 2005 26-18-3
Notice of Continuation October 14, 2009

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-36. Services by Community Mental Health Centers.
R414-36-1. Introduction and Authority.

(1) This rule outlines the diagnostic and rehabilitative mental health services provided to Medicaid clients by community mental health centers.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed., and implements waivers authorized under federal waiver authority in subsections 1902(a)(1), 1915(b)(3) and 1915(b)(4) of the Social Security Act.

R414-36-2. Definitions.

In this rule:

"Diagnostic services" means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of a mental health disorder in a client.

"Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

"Rehabilitative services" means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's mental health disorder and restoration of the client to his best possible functional level.

R414-36-3. Client Eligibility Requirements.

Diagnostic and rehabilitative mental health services are available to any Categorically or Medically Needy Medicaid client, except that

(1) Medicaid clients who reside at the Utah State Hospital and the Utah Developmental Center are not covered under the Prepaid Mental Health Plan;

(2) children in State custody are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services;

(3) Medicaid clients who enroll in the UNI HOME Program are disenrolled from the Prepaid Mental Health Plan;

(4) state subsidized adoptive children who have been exempted from the Prepaid Mental Health Plan by parent request are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services.

R414-36-4. Program Access Requirements.

(1) Diagnostic and rehabilitative mental health services must be provided by or through a community mental health center that is under contract with or directly operated by a local county mental health authority.

(2) The community mental health center must evaluate the client to determine if the client has a mental health disorder that requires mental health services.

R414-36-5. Service Coverage.

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative mental health services includes:

(a) psychiatric diagnostic interview examination;
(b) mental health assessment by non-physician;
(c) psychological testing;
(d) individual psychotherapy;
(e) group psychotherapy;
(f) individual psychotherapy with medical evaluation and management services;
(g) family psychotherapy with patient present;
(h) family psychotherapy without patient present;
(i) therapeutic behavioral services;
(j) pharmacologic management;
(k) individual skills training and development;
(l) psychosocial rehabilitative services; and
(m) intensive psychosocial rehabilitative services for children ages 0 through the month of their 13th birthday.

(3) Medicaid clients who reside in counties covered by a Prepaid Mental Health Plan contractor are automatically enrolled in the Prepaid Mental Health Plan for that county. A Medicaid client covered by a Prepaid Mental Health Plan may receive additional services approved by CMS under the Social Security Act section 1915(b)(3) waiver authority.

(4) Medicaid adult recipients ages 19 and over in the TANF and Medically Needy eligibility categories who are enrolled in the Non-Traditional Medicaid Plan have the following service limitations:

(a) inpatient mental health care is limited to a maximum of 30 days per year;

(b) outpatient mental health services are limited to a maximum of 30 outpatient mental health treatment services or visits per year

(c) targeted case management services under R414-33A for the chronically mentally ill also count toward the maximum of 30 outpatient mental health services.

(4) Medicaid clients enrolled in the Non-Traditional Medicaid Plan also have the following service exclusions:

(a) services for conditions without manifest psychiatric diagnoses;

(b) hypnosis, occupational, or recreational therapy; and

(c) office calls in conjunction with medication management for repetitive therapeutic injections.

(4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

R414-36-6. Qualified Providers.

Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, or a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (a) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsections (1) or (2).

R414-36-7. Reimbursement Methodology.

(1) Two community mental health centers are not under contract with the Department as Prepaid Mental Health Plan contractors. The Department reimburses these two community mental health centers on a fee-for-service basis. The Department pays the lower of the amount billed or the Medicaid fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay clients.

(2) The Department pays Prepaid Mental Health Plan contractors a capitated monthly premium to cover all inpatient and outpatient mental health services needed by Medicaid clients. The premiums are developed and certified as actuarially sound by independent actuaries who meet the qualification standards established by the American Academy of Actuaries.

KEY: Medicaid
February 1, 2005 **26-18-3**
Notice of Continuation October 21, 2009

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-50. Dental, Oral and Maxillofacial Surgeons.
R414-50-1. Introduction and Authority.

(1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.

(2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5), which is adopted and incorporated by reference.

R414-50-2. Definitions.

Definitions for this rule are found in R414-1-1. In addition:

(1) "Oral and Maxillofacial Surgeons" means those individuals who have completed a post-graduate curriculum from an accredited institution of higher learning and are board-certified or board-eligible in oral and maxillofacial surgery.

(2) "Oral and maxillofacial surgery" means that part of dental practice which deals with the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the oral and maxillofacial regions.

R414-50-3. Client Eligibility Requirements.

Oral and maxillofacial surgery services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Nevertheless, physician, medical and surgical services performed by an oral surgeon are available to all categorically and medically needy clients.

R414-50-4. Program Access Requirements.

Oral and maxillofacial surgery services are available only from an oral and maxillofacial surgeon who is a Medicaid provider. These services are available from a dentist provider if an oral and maxillofacial surgeon is unavailable.

R414-50-5. Service Coverage.

(1) Emergency services are covered services. Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

R414-50-6. Reimbursement.

(1) Fees for services for which the Department will pay dentists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid

July 1, 2009	**26-1-4.1**
Notice of Continuation October 21, 2009	**26-1-5**
	26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-90. Diabetes Self-Management Training.
R414-90-1. Introduction and Authority.

Diabetes self-management training is an educational program that teaches individuals how to successfully manage and control diabetes. Diabetes self-management training is a component of the Utah Medicaid State Plan and is authorized by 42 CFR 440.130 and Section 26-18-3.

R414-90-2. Client Eligibility Requirements.

Diabetes self-management training is available to Traditional Medicaid clients, Non-Traditional Medicaid clients, and Primary Care Network (PCN) clients who are diabetic and receive a physician referral for services.

R414-90-3. Program Access Requirements.

(1) Diabetes self-management training is limited to services approved by a physician, under a comprehensive plan that is essential to ensure successful diabetes self management by the individual patient.

(2) Qualified providers for the diabetes self-management training program include registered nurses, registered pharmacists and certified dieticians licensed by the state. These providers are required to be certified or recognized by the American Association of Diabetes Educators (AADE) or approved through the Utah Department of Health as diabetes instructors.

(3) Diabetes self-management training services provided by a home health agency, may only be provided by a licensed health care provider who is certified by an American Diabetes Association (ADA) program or approved through the Utah Department of Health.

(4) Home Health Agency participation in diabetes self-management training is limited to providing services to the patient who is receiving other skilled services in the home based on physician order and plan of care, when the home is the most appropriate site for the care provided.

R414-90-4. Service Coverage.

(1) Patient assessment for the diabetes self-management program includes a review of medical history, risk factors, health status, resource utilization, knowledge and skill level, and cultural barriers to effective diabetes self-management.

(2) Diabetes self-management training is limited to a maximum of 10 hours of outpatient services.

(3) Diabetes self-management training is limited to training presented by a certified program that meets all of the standards of the National Diabetes Advisory Board covering the 15 ADA core curriculum content areas. The program must also be recognized by the American Association of Diabetes Educators or be certified by the Utah Department of Health.

(4) Diabetes self-management training includes group sessions, but must allow for direct, face to face interaction between the educator and the patient.

(5) Diabetes self-management training must be sufficient in length to meet the goals of the basic comprehensive plan of care. Individual sessions must be sufficient in number and designed to meet the individual's cultural and learning needs.

(6) A maximum of 10 sessions per year may be approved by a physician and through prior authorization.

(7) Repeating any or all of a diabetes self-management program is limited to new conditions or a change in the health status of the client that warrants the need for new training.

(8) The following services are also covered:

(a) annual eye examination that includes dilation;

(b) annual physical;

(c) glycosylated hemoglobin laboratory test with foot examination;

(d) blood sugar review; and

(e) blood pressure reading every 3 to 4 months.

(9) Diabetes self-management training does not cover charges for facility use.

R414-90-5. Reimbursement.

Medicaid payments for approved diabetes self-management training are based on the established Medicaid fee schedule, unless a lower amount is billed. The fee schedule was established after internal and external consultation with diabetes experts. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid
January 19, 2005 26-1-5
Notice of Continuation September 9, 2009 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-301. Medicaid General Provisions.
R414-301-1. Authority.

The Department of Health may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more of the medical programs listed below. The Department of Health is responsible for the administration of these programs:

(1) Aged Medicaid (AM);
(2) Blind Medicaid (BM);
(3) Disabled Medicaid (DM);
(4) Family Medicaid (FM);
(5) Child Medicaid (CM);
(6) Title IV-E Foster Care Medicaid (FC);
(7) Medicaid for Pregnant Women (PG);
(8) Prenatal Medicaid (PN);
(9) Newborn Medicaid (NB);
(10) Transitional Medicaid (TR);
(11) Refugee Medicaid (RM);
(12) Utah Medical Assistance Program (UMAP);
(13) Qualified Medicare Beneficiary Program (QMB);
(14) Specified Low-Income Medicare Beneficiary Program (SLMB);
(15) Qualifying Individuals, Group 1 Program (QI-1);
(16) Medicaid Work Incentive;
(17) Medicaid Cancer Program;
(18) Primary Care Network Demonstration, which includes the Primary Care Network and the Covered-at-Work Programs.

R414-301-2. Definitions.

The following definitions apply in rules R414-301 through R414-308:

(1) "Agency" means any local office or outreach location of either the Department of Health or the Department of Workforce Services that accepts and processes applications for Medicaid and Medicare Cost-Sharing programs. In incorporated federal materials, "agency" means the Utah Department of Health.

(2) "Applicant" means any person requesting assistance under any of the programs listed in R414-301.

(3) "Assistance" means medical assistance under any of the programs listed in R414-301.

(4) "CHEC" means Child Health Evaluation and Care.

(5) "Client" means an applicant or recipient of any of the programs listed in R414-301.

(6) "Department" means the Department of Health.

(7) "Director" or "designee" means the director or designee of the Division of Health Care Financing.

(8) "Local" office means any community office location of the Department of Workforce Services, the Department of Human Services or the Department of Health where an individual may apply for medical assistance programs.

(9) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(10) "QI-1" means the Qualifying Individuals Group 1 program, a Medicare Cost-Sharing program.

(11) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(12) "Recipient" means any individual receiving assistance under any of the programs listed in R414-301-1. It may also be used to mean someone who is receiving other assistance or benefits such as SSI, in which case the text will specify such other type of benefit or assistance.

(13) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including:

(a) change in the source of income;
(b) change of more than $25 in gross income;
(c) changes in household size;
(d) changes in residence;
(e) gain of a vehicle;
(f) change in resources;
(g) change of more than $25 in total allowable deductions;
(h) changes in marital status, deprivation, or living arrangements;
(i) pregnancy or termination of a pregnancy;
(j) onset of a disabling condition; and
(k) change in health insurance coverage including changes in the cost of coverage.

(14) "Resident of a medical institution" means a single client who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married clients are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(15) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(16) "Spenddown" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid, or some combination of these.

(17) "Spouse" means any individual who has been married to a client or recipient and has not legally terminated the marriage.

(18) "Worker" means a state employee who determines eligibility for Medicaid and Medicare Cost-Sharing programs.

R414-301-3. Client Rights and Responsibilities.

(1) Anyone may apply or reapply any time for any program.

(2) If someone 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) Workers will identify themselves to clients.

(4) Clients will be treated with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously.

(6) If a client must be visited after working hours, the worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The Department may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any department local office.

(12) The client must repay any understated liability. The client is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the client's behalf to Medicaid Health Plans and mental health providers even if the client does not receive a direct medical service from these entities.

(13) The client must report a reportable change as defined

in R414-301-2(12) to the local office within ten days of the day the change becomes known.

R414-301-4. Safeguarding Information.

(1) The department adopts 42 CFR 431(F), 2001 ed., which is incorporated by reference. The department requires compliance with Sections 63G-2-101 through 63G-2-310.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) 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 released cannot include information obtained through an income match system.

R414-301-5. Complaints and Agency Conferences.

(1) A client may request an agency conference with the eligibility staff or supervisor at the Medicaid eligibility agency at any time to resolve a problem regarding the client's case. Requests shall be granted at the Medicaid eligibility agency's discretion. Clients may have an authorized representative or a friend attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing according to the provisions in Section R414-301-6, to assure the right to a hearing.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in Section R414-301-6, the client may proceed with the fair hearing process.

(5) The Medicaid eligibility agency provides proper notice if the agency makes any additional adverse changes in the client's eligibility as a result of the agency conference. The client then has a right to request a fair hearing based on the new adverse action.

R414-301-6. Hearings.

(1) The Department provides a fair hearing process for applicants and clients in accordance with the requirements of 42 CFR 431.220 through 431.246. The Department complies with Title 63G, Chapter 4.

(2) An applicant or client must request a hearing in writing or orally at the Medicaid eligibility agency. The request must be made within 90 calendar days of the date of the notice of agency action with which the applicant or client disagrees. The request need only include a statement that the applicant or client wants to present his or her case.

(3) Hearings are conducted only at the request of a client or spouse; a minor client's parent; or a guardian or representative of the client.

(4) A client who requests a fair hearing shall receive continued medical assistance benefits pending a hearing decision if the client requests a hearing before the effective date of the action or within ten calendar days of the mailing date of the notice.

(5) The client must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A client has the right to not accept the continued benefits that the Department offers pending a hearing decision.

(b) Benefits that the client must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The Medicaid eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, then the Medicaid eligibility agency must receive the request by the close of business on the first business day immediately following the due date.

(7) The Department of Workforce Services (DWS) conducts fair hearings for all medical assistance cases except those concerning eligibility for foster care or subsidized adoption Medicaid. The Department of Health (DOH) conducts hearings for foster care or subsidized adoption Medicaid cases.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsections R986-100-124(1) and R986-100-128(17). In addition, DWS complies with all the hearing requirements of Rule R986-100.

(9) DOH conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date DOH issues the hearing decision, the applicant or client may file a petition for judicial review with the district court.

(10) DWS shall not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or client may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or client may have a friend or family member attend the hearing for assistance.

(12) The applicant, client or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the Medicaid eligibility agency must attend the hearing. Other employees of the Medicaid eligibility agency, other state agencies and legal representatives for the Medicaid eligibility agency may attend as needed.

(14) The DWS Office of Adjudications and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) DWS shall include information about the right to request a superior agency review from DOH and how to make that request.

(b) The applicant or client may appeal the DWS decision to DOH pursuant to Section R410-14-17. The request for agency review must be made in writing within 30 days of the mailing date of the decision.

(15) DOH, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. DOH conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless DOH conducts a superior agency review. DOH conducts a superior agency review when the applicant or client appeals the DWS decision or upon its own accord if it disagrees with the DWS decision. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) DOH notifies DWS whenever it conducts a superior agency review. The DWS hearing decision is suspended until DOH issues a final decision and order on agency review.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A DOH decision and order on agency review becomes final upon issuance.

(20) The Medicaid eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or client may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to DOH negates this right to a judicial appeal.

(22) Clients are not entitled to continued benefits pending judicial review by the district court.

KEY: client rights, hearings, Medicaid
October 22, 2009 26-18
Notice of Continuation January 31, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Definitions.

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition:

(a) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(b) "Basic maintenance standard" or "BMS" means the income level for eligibility for 1931 Family Medicaid, and for coverage of the medically needy based on the number of family members who are counted in the household size.

(c) "Benefit month" means a month or any portion of a month for which an individual is eligible for Medicaid.

(d) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(e) "Federal poverty guideline" or "FPL" 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 poverty means the federal poverty guideline.

(f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

(h) "Poverty-related" refers to any one of a variety of medical assistance programs that use a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

(j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(k) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income to determine eligibility for Aged, Blind and Disabled Medicaid and Aged, Blind and Disabled Institutional Medicaid coverage groups.

(2) The Department incorporates by reference 42 CFR 435.811 and 435.831, 2008 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2008 ed. The Department incorporates by reference Sections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2009, to determine income and income deductions for Medicaid eligibility. 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 federally-funded medical assistance programs.

(3) The following definitions apply to this section:

(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed 1/3 of the SSI federal benefit rate plus $20.

(4) The agency does not count VA (Veteran's Administration) payments for aid and attendance or the portion of a VA payment that is made because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(5) The agency only counts as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent also counts as income of the veteran or surviving spouse who receives the payment.

(6) SSA reimbursements of Medicare premiums are not countable income.

(7) The agency does not count as income, the value of special circumstance items if the items are paid for by donors.

(8) For A, B and D Medicaid, the agency counts as income two-thirds of current child support received in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(9) Child support payments that are payments owed for past months or years are countable income of the parent or guardian, and will be counted to determine eligibility of the parent or guardian. Countable income of the parent is used to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(10) For A, B and D Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(11) The agency counts as unearned income, the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(12) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and

maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(13) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(14) The agency does not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs. The agency does not count as income grants, scholarships, fellowships, or gifts from other sources that are actually used to pay, or will be used to pay, allowable educational expenses. Any amount of grants, scholarships, fellowships, or gifts from other sources that are used or will be used for non-educational expenses including food and shelter expenses, counts as income in the month received. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(15) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the agency does not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, the agency deems the spouse's income to the aged, blind, or disabled spouse to determine eligibility.

(c) The agency determines household size and whose income counts for A, B or D Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency compares the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the agency compares it, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the agency does not count the ineligible spouse's income and does not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, is compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, then the income of both spouses, after allowable deductions, is compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the agency deems income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then the agency counts only the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If it exceeds the limit, then income, after allowable deductions, is compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, is compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income, after allowable deductions, is compared to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind, or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the Medicaid Work Incentive program. If both spouses want coverage, however, the agency first determines eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The agency determines household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, the agency combines income of both spouses and compares it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The combined countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a

spouse, only the eligible spouse's income is counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the agency will not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For institutional Medicaid including home and community based waiver programs, the agency counts only the client in the household size, and counts only the client's income and income deemed from an alien client's sponsor, to determine contribution to cost of care.

(17) The agency deems income, unearned and earned, 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.

(18) 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 benefit.

(19) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(20) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, only the amount paid to the individual is counted as income.

(21) The Department does not count as unearned income the additional $25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may receive this weekly payment from March 2009 through June 2010.

(22) The Department does not count as unearned income the one-time economic recovery payments that an individual receives under 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. It further does not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(23) The Department does not count as unearned income the Consolidated Omnibus Budget 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.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income for the Medicaid Work Incentive program.

(2) The Department incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157 and Appendix to Subpart K of 416, 2008 ed. The Department adopts Subsection 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2009. 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 federally-funded medical assistance programs.

(3) The Department allows the provisions found in Subsections R414-304-2(4) through (14), and (18) through (23).

(4) The agency determines income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(5) For the Medicaid Work Incentive Program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors are eligible without paying a Medicaid buy-in premium.

(6) The agency determines household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, the agency counts only the income of the individual. The agency includes in the household size, any dependent children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the agency compares the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, the agency combines their income before allowing any deductions. The agency includes in the household size the spouse and any children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the agency compares the countable income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, the agency combines the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. The agency includes in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the agency compares the countable income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) This rule establishes how the Department treats unearned income to determine eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(2) The Department incorporates by reference 42 CFR 435.811 and 435.831, 2008 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), and 233.20(a)(4)(ii), 2008 ed. The Department incorporates by reference Section 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 2009. 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 federally-funded medical assistance programs.

(3) The term "unearned income" means cash received for which the individual performs no service.

(4) The agency does not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(5) The agency does not count as income support and maintenance assistance provided in-kind by a non-profit

organization certified by the Department of Human Services.

(6) The agency does not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(7) The agency does not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(8) The agency does not count as income the amount deducted from benefit income that is to repay an overpayment of such benefit income.

(9) The agency does not count as income the value of special circumstance items paid for by donors.

(10) The agency does not count as income home energy assistance.

(11) The agency does not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the agency only counts the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(12) The agency does not count as income SSA reimbursements of Medicare premiums.

(13) The agency does not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for Medicaid, the agency counts income used to determine the amount of these payments, unless the income is an excluded income under other laws or regulations.

(14) The agency does not count as income interest or dividends earned on countable resources. The agency does not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(15) The agency does not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(16) The agency counts as income SSI and State Supplemental payments received by children who are included in the coverage under Child, Family, Newborn, or Newborn Plus Medicaid.

(17) The agency counts unearned rental income. The agency deducts $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the agency deducts the greater of either $30 or the following actual expenses that the client can verify.

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and,

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(18) The agency counts deferred income when it is received by the client if it was not deferred by choice and receipt can be reasonably anticipated. If the income was deferred by choice, it counts as income when it could have been received. The amount deducted from income to pay for benefits like health insurance, medical expenses or child care counts as income in the month the income could have been received.

(19) The agency counts the amount deducted from income that is to pay an obligation such as child support, alimony or debts in the month the income could have been received.

(20) The agency counts payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(21) The agency only counts as income the portion of a Veterans Administration check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent counts as income of the veteran or surviving spouse who receives the payment.

(22) The agency counts as income deposits to financial accounts jointly owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the agency does not count those funds as income. The agency may require the client to terminate access to the jointly held accounts.

(23) The agency counts as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(24) The agency counts current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. If the Office of Recovery Services is collecting current child support, it is counted as current even if the Office of Recovery Services mails the payment to the client after the month it is collected.

(25) The agency counts payments from annuities as unearned income in the month the payment is received.

(26) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the agency only counts the amount paid to the individual.

(27) The agency deems both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(28) The agency stops deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(29) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(30) The Department does not count as unearned income the additional $25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may receive this weekly payment from March 2009 through June 2010.

(31) The Department does not count as unearned income

the one-time economic recovery payments that an individual receives under 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. It further does not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(32) The Department does not count as unearned income the COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department incorporates by reference 42 CFR 435.811 and 435.831, 2008 ed., and 20 CFR 416.1110 through 416.1112, 2008 ed. 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 federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the Social Security Administration, the Department shall not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) Capital gains shall be included in the gross income from self-employment.

(7) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(8) No deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses.

(9) Net losses of self-employment from the current tax year may be deducted from other earned income.

(10) The Department disregards earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. This income is also excluded for individuals described in 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XII), 1902(a)(10)(A)(ii)(XIII) 1902(a)(10)(A)(ii)(XVIII), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act. The Department does not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(11) Deductions from earned income such as insurance premiums, savings, garnishments, or deferred income are counted in the month when the funds could have been received.

(12) The Department does not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department incorporates by reference 42 CFR 435.811 and 435.831, 2008 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2008 ed. 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 federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is 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 a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws.

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in a job placement under the federal Workforce Investment Act (WIA).

(4) For Family Medicaid, the AFDC $30 and 1/3 of earned income deduction is allowed if the wage earner has received 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) The Department determines countable net income from self-employment by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 percent flat rate exclusion amount, the Department allows actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or

more in a calendar month. A maximum of up to $200.00 per month per child under age 2 and $175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to $160.00 per month per child under age 2 and $140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) The Department excludes earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.110, 435.112 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.222, 435.223, and 435.300 through 435.310 and individuals defined in Title XIX of the Social Security Act Sections 1902(a)(10)(A)(i)(III), (IV), (VI), (VII), 1902(a)(10)(A)(ii)(XVII), 1902(a)(47), 1902(e)(1), (4), (5), (6), (7), and 1931(b) and (c), 1925 and 1902(l). The Department does not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household is eligible for 1931 Family Medicaid. No health insurance premiums or medical bills are deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household is eligible to receive Transitional Medicaid following the provisions of Rule R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household is eligible to receive Transitional Medicaid following the provisions of Rule R414-303 as long as it meets all other criteria.

(13) The Department does not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) This section sets forth income deductions for non-institutional aged, blind, disabled and family Medicaid programs, except for the Medicaid Work Incentive program.

(2) The Department applies the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, 2005 ed., which are incorporated by reference. Any additional income deductions or limitations are described in this rule.

(3) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the Department deducts from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(4) To determine eligibility for and the amount of a spenddown under medically needy programs, the Department deducts from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The Department also deducts from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2005 ed., except no deduction is allowed for Medicare premiums the Department pays for or reimburses to recipients.

(a) The Department deducts the entire payment in the month it is due and does not prorate the amount.

(b) The Department does not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(5) To determine the spenddown under medically needy programs, the Department deducts from income health insurance premiums the client or a financially responsible family member paid in the application month or during the three month retroactive period. The deduction is allowed either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(6) To determine eligibility for medically needy coverage groups, the Department deducts from income medically necessary medical expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client or a dependent sibling of a dependent client, a deceased spouse or a deceased dependent child.

(b) The medical bill will not be paid by Medicaid and is not payable by a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three-month time-period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter if the client still owes the provider for the service. Bills for services received and paid during the application month or the three-month time-period preceding the date of application can be used as deductions only through the month of application.

(7) A medical expense cannot be allowed as a deduction more than once.

(8) A medical expense allowed as a deduction must be for a medically necessary service. The Department decides if services are medically necessary.

(9) The Department deducts medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the Department deducts paid expenses before unpaid expenses.

(10) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the State Medicaid Plan.

(b) The expense must be for a service received during the benefit month.

(c) The Department will not refund any portion of any medical expense the client uses to meet a Medicaid spenddown because the client assumes responsibility to pay any expenses used to meet a spenddown.

(d) A refund cannot exceed the actual cash spenddown amount paid by the client.

(e) The Department does not refund spenddown amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The unpaid bills may be used to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent such bills remain unpaid at the beginning of such future month.

(f) The Department will reduce a refund by the amount of any unpaid obligation the client owes the Department.

(11) For poverty-related medical assistance, an individual or household is ineligible if countable income exceeds the applicable income limit. Medical costs cannot be deducted from income to determine eligibility for poverty-related medical assistance programs. Individuals cannot pay the difference between countable income and the applicable income limit to become eligible for poverty-related medical assistance programs.

(12) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the agency told the client that the Medicaid provider cannot use the provider's funds to pay the client's spenddown and that the provider cannot loan the client money for the client to pay the spenddown.

(13) A client may meet the spenddown by paying the agency the amount with cash or check, or by providing proof to the agency of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services received in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses cannot be payable by Medicaid or a third party.

(d) For each benefit month, the client can choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the agency or by presenting a cash or check payment to the agency equal to the spenddown amount.

(14) The Department cannot accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. The Department cannot accept spenddown payments from a client if the funds were loaned to the client by a Medicaid provider.

(15) The Department deducts only the amount of pre-paid medical expenses that equals the cost of services actually received in the month such expenses are paid. Payments a client makes for medical services in a month before the month services are actually received cannot be deducted from income.

(16) For non-institutional Medicaid programs, the Department deducts institutional medical expenses the client owes only if the expenses are medically necessary. The Department decides if services for institutional care are medically necessary.

(17) The Department does not require a client to pay a spenddown of less than $1.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown only if the services were not provided by the Medicaid-contracted, mental health provider.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) This section sets forth income deductions for the Medicaid Work Incentive (MWI) program.

(2) To determine eligibility for the MWI program, the Department deducts the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the Department deducts the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one half of the remaining earned income;

(d) A current-year loss from a self-employment business can be deducted only from other earned income.

(3) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs are not deducted from income before comparing countable income to the applicable limit.

(4) The Department deducts from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(5) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the Department. The MWI premium cannot be met with medical expenses.

(6) The Department does not require a client to pay a MWI buy-in premium of less than $1.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) This section sets forth income deductions for aged, blind, disabled and family institutional Medicaid programs.

(2) The Department applies the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, 2005 ed., which are incorporated by reference. The Department applies Subsection 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, which are incorporated by reference. Any additional income deductions or limitations are described in this rule.

(3) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(4) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the

Department deducts from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums are deducted in the month due. The payment is not pro-rated. The Department deducts the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums the Department pays for or reimburses to recipients.

(b) The Department deducts from income the portion of a combined premium, attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(5) The Department deducts medical expenses from income only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill will not be paid by Medicaid or by a third party;

(c) a paid medical bill can be deducted only through the month it is paid. No portion of any paid bill can be deducted after the month of payment.

(6) The Department does not deduct medical or remedial care expenses that the Department is prohibited from paying because the expenses are incurred during a penalty period imposed due to a transfer of assets for less than fair market value. The Department does not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 6014 of Pub. L. 109-171 because the equity value of the individual's home exceeds the limit set by such law. The Department will not deduct such expenses during the month the services are received nor for any month after the month services are received even when such expenses remain unpaid.

(7) The Department does not allow a medical expense as an income deduction more than once.

(8) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health decides if services are medically necessary.

(9) The Department deducts only the amount of pre-paid medical expenses that equals the cost of services actually received in the month such expenses are paid. Payments a client makes for medical services in a month before the month the services are actually received cannot be deducted from income.

(10) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the agency told the client that the Medicaid provider cannot use the provider's funds to pay the client's spenddown and that the provider cannot loan the client money for the client to pay the spenddown.

(11) A client may meet the spenddown by paying the agency the amount with cash or check, or by providing to the agency proof of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services received in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses cannot be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the agency or by presenting a cash or check payment to the agency equal to the spenddown amount.

(12) The Department cannot accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. The Department cannot accept spenddown payments from a client if the funds were loaned to the client by a Medicaid provider.

(13) Institutionalized clients are required to pay all countable income remaining after allowable income deductions to the institution in which they reside as their contribution to the cost of their care.

(14) A client who pays a cash spenddown, or a liability amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or liability paid up to the amount of bills paid by the client. The following criteria applies:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the State Medicaid Plan.

(b) The expense must be for a service received during the benefit month.

(c) The Department will not refund any portion of any medical expense the client uses to meet a Medicaid spenddown or to reduce the liability owed to the institution because the client assumes responsibility to pay any expenses used to meet a spenddown or reduce a liability.

(d) A refund cannot exceed the actual cash spenddown or liability amount paid by the client.

(e) The Department does not refund spenddown or liability amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The unpaid bills may be used to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent such bills remain unpaid at the beginning of such future month.

(f) The Department reduces a refund by the amount of any unpaid obligation the client owes the Department.

(15) The Department deducts a personal needs allowance for residents of medical institutions equal to $45.

(16) When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department deducts a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(6), for up to six months to maintain the individual's community residence.

(17) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver is eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized. The Department applies the provisions of Section 1924(d) of the Compilation of Social Security Laws, or the provisions of 42 U.S.C. 435.726 or 435.832 to determine the deduction for a spouse and family members.

(18) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(19) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the

client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown only if the services were not provided by the Medicaid-contracted, mental health provider.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take 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. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" include any change in the source of income and any change that causes income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI-1, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period. Income will not be factored for retroactive months.

R414-304-11. Income Standards.

(1) This rule sets forth the income standards the Department uses to determine eligibility for Medicaid coverage groups.

(2) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2003, which are incorporated by reference.

(3) The Department calculates the Aged and Disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of the Medicaid Work Incentive program apply.

(4) The income standard for the Medicaid Work Incentive Program (MWI)for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

(a) The Department charges a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the Department

charges a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(5) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

(6) The current Medicaid Income Standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the 100% of poverty A or D Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI-1 case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18;

(e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-13. Family Medicaid Filing Unit.

This section provides criteria governing who is included in a family Medicaid household.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) For Family Medicaid programs, if a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the Department includes the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members do not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers only emergency services under other provisions of Medicaid law.

(3) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group, and an ineligible alien child may be excluded from the household size, at the request of the specified relative responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size for deciding what income limit is applicable to the family. Income and resources of an excluded child are not considered when determining eligibility or spenddown.

(4) The Department does not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent is not counted in the household size. A cash

contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(5) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child is included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children are included in the household size.

(6) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents are included in the household size.

(7) Parents who have relinquished their parental rights shall not be included in the household size.

(8) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(9) If a person is "included" or "counted" in the household size, it means that that family member is counted as part of the household and his or her income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level applies to determine eligibility for the client or family.

R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act 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 benefit.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

(2) To determine eligibility of the aged, blind or disabled, the Department incorporates by reference 42 CFR 435.840, 435.843, 435.845, 2008 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, 2009 ed. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department incorporates by reference Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2009. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two-person household.

(6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2009 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is a countable resource beginning the month after the child receives it.

(9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(10) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The individual shall receive one three-month extension if more than three months is needed to complete the actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(13) For an institutionalized individual, a home or life estate is not considered an exempt resource.

(14) To determine eligibility for nursing facility or other long-term care services, the Department excludes the value of the individual's principal home or life estate from countable resources if the individual's equity in the home or life estate does not exceed the equity limit of $500,000 as established in 42 U.S.C. 1396p(f)(1)(A), or as increased according to the provisions of 42 U.S.C. 1396p(f)(1)(C) of the Compilation of the Social Security Laws, and one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(15) If the equity value of the individual's home or life estate exceeds $500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C), the individual is ineligible for nursing facility or other long-term care services unless the individual's spouse, or the individual's child who is under age 21 or is blind or permanently disabled lawfully resides in the home.

(16) For A, B and D Medicaid, the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(17) A previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231, may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. The funds cannot be exempted retroactively more than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(18) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(19) The Department excludes resources of an SSI recipient who has a plan for achieving self support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self support goals.

(20) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(21) Business resources required for employment or self-employment are not counted.

(22) For the Medicaid Work Incentive Program, the Department excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an

Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(23) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(22) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(24) Assets 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 benefit.

(25) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(26) The Department excludes from countable resources the following resources:

(a) Amounts an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(b) Amounts an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt.

(c) Amounts an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(d) The value of any reduction in Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e) Certain property and rights of American Indians including certain tribal lands, personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859

89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.

(2) The Department incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), 2008 ed. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2009. The Department does not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for pregnant women who meet the criteria 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, the resource limit is $2,000 for a one person household, $3,000 for a two person household and $25 for each additional household member. For pregnant women defined above, the resource limit is defined in Section R414-303-11.

(5) Except for the exclusion for a vehicle, the agency uses the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(6) To determine countable resources for Medicaid eligibility, the agency considers all available resources owned by the client. The agency does not consider a resource unavailable based upon the client's intent to or action of disposing of non-liquid resources.

(7) The agency counts resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(8) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an applicant or recipient, the agency counts the resources as the applicant's or recipient's. The arrangement may be formal or informal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, the agency does not count the resource until it can be made available. Before an applicant can be made eligible, or to continue eligibility for a recipient, the applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Except for determining countable resources for 1931 Family Medicaid, the agency excludes a maximum of $1,500 in equity value of one vehicle.

(11) The agency does not count as resources the value of household goods and personal belongings that are essential for day-to-day living. Any single household good or personal belonging with a value that exceeds $1000 must be counted toward the resource limit. The agency does not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(12) The agency does not count the value of one wedding ring and one engagement ring as a resource.

(13) For a non-institutionalized individual, the agency does not count the value of a life estate as an available resource if the life estate is the applicant's or recipient's principal residence. If the life estate is not the principal residence, the rule in Subsection R414-305-1(27) applies.

(14) The agency does not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(15) For a non-institutionalized individual, the agency does not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency counts as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-1(13), (14), (15), and (27) apply to the individual's home or life estate.

(16) The agency does not count as a resource the value of water rights attached to an excluded home and lot.

(17) The agency does not count any resource, or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency counts as a resource any money from such a resource that is given to the child as unearned income and retained beyond the month received.

(18) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The individual shall receive one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(19) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted as a resource for the first 9 months after receipt.

(20) The agency excludes from resources, a burial and funeral fund or funeral arrangement up to $1500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. All such funds must be separated from non-burial funds and clearly designated as burial funds. Interest earned on exempt burial funds and left to accumulate does not count as a resource. If exempt burial funds are used for some other purpose, remaining funds will be counted as an available resource as of the date funds are withdrawn.

(21) Assets 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 benefit.

(22) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(23) Business resources required for employment or self employment are not counted. The Department treats non-business, income-producing property in the same manner the SSI program treats it as defined in 42 CFR 416.1222.

(24) For 1931 Family Medicaid households, the agency will not count as a resource either the equity value of one vehicle that meets the definition of a "passenger vehicle" as defined in 26-18-2(6), or $1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(25) For eligibility under Family-related Medicaid programs, the agency will not count as a resource retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(26) The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit for nine months following the month received. Any remaining funds will count as a resource in the 10th month after being received.

(27) The Department excludes from countable resources the following resources:

(a) Amounts an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(b) Amounts an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt.

(c) Amounts an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(d) The value of any reduction in COBRA premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e) Certain property and rights of American Indians including certain tribal lands, personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.

(2) To determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share, the provisions of 42 U.S.C. 1396r-5, which are commonly known as the spousal impoverishment rules, shall apply. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The resource limit for an institutionalized individual is $2,000.

(4) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the Medicaid eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-3(5) as of the first continuous period of institutionalization or application for Medicaid home and community-based waiver services. The Medicaid eligibility agency shall notify the requester of the results of the assessment. The individual does not have to apply for Medicaid or pay a fee for the assessment.

(5) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The resources counted for the assessment are those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. However, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the Medicaid eligibility agency sets the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The Medicaid eligibility agency sets the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions.

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard.

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard.

(iii) The Department uses the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the Department follows the "income first" rule found at 42 U.S.C. 1396r-5(d)(6).

(6) The Department counts any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(7) After the Medicaid eligibility agency establishes eligibility for the institutionalized spouse, the Department allows a protected period lasting until the time of the next regularly scheduled eligibility redetermination for an institutionalized individual to transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit.

(8) The Department does not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the Medicaid eligibility agency establishes eligibility.

(9) If an individual is otherwise eligible for institutional Medicaid, the Department does not count the community spouse's resources as available to the institutionalized individual because of an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

(a) The individual assigns support rights to the State.

(b) The individual will not be able to get the medical care needed without Medicaid.

(c) The individual is at risk of death or permanent disability without institutional care.

R414-305-4. Treatment of Trusts.

This section defines requirements for the treatment of assets held in a trust to determine eligibility for Medicaid. The Department applies all provisions of 42 U.S.C. 1396p(d) dealing with trust assets in determining Medicaid eligibility. This section provides additional provisions for particular types of trusts.

(1) Medicaid Qualifying Trusts established before August 11, 1993. The Department applies the criteria in Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., in determining the availability of trusts established before August 11, 1993. This section of the Social Security Act was repealed in 1993, but the provisions still apply to trusts created before the date it was repealed. The requirements of that section are as follows; however, if there is a conflict between the 1993 provisions of Section 1902(k) and the provisions of Subsections R414-305-4(1)(a), (b), and (c), the 1993 provisions of Section 1902(k) control.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the applicant or recipient who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for such individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable nor whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) Trust for a Disabled Person under Age 65 established in compliance with 42 U.S.C. 1396p(d)(4)(A). These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust complying with the provisions in Subsection R414-305-4(2) and (4) do not count as available resources.

(a) The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382c(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.

(b) The trust must be established solely for the benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or the court.

(c) The trust may only contain the assets of the disabled individual. The Department treats any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. Such additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(d) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(e) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(f) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(g) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(h) The Department continues to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the Department treats the transfer as a transfer of resources for less than fair market value which may create a period of ineligibility for certain Medicaid services.

(i) A trust that provides benefits to other persons is not an individual special needs trust and does not the meet the criteria to be excluded from resources.

(j) A corporate trustee may charge a reasonable fee for services.

(k) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(l) Additional trusts cannot be created within the special needs trust.

(3) Pooled Trust for Disabled Individuals. A pooled trust is a specific trust for disabled individuals established pursuant to 42 U.S.C. 1396p(d)(4)(C) that meets all of the following conditions.

(a) The trust contains the assets of disabled individuals.

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents.

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the Deparment treats such assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending

by the trust.

(i) Individual trust accounts may not be liquidated prior to the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50 percent of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that such retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-4(2) and (3).

(a) No expenditures may be made after the death of the beneficiary prior to repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust.

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share.

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the Medicaid eligibility agency.

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual.

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary.

(ii) The Department treats any provision or action that does or will divert payments or principal from such annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary.

(e) The Department counts cash distributions from the trust as income in the month received.

(f) The Department counts retained distributed amounts as resources beginning the month following the month such amounts are distributed. The Department applies the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within 10 days of receipt. The Department excludes assets purchased with trust funds if the trust retains ownership.

(g) The Department counts distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid.

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition.

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The Medicaid eligibility agency may require a statement of medical need for such services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the Medicaid eligibility agency may require verification of the person's ability to carry out the needed services.

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically-necessary attendant.

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the Medicaid eligibility agency upon request or upon any change of trustee.

(5) Assets held in a pooled trust complying with the provisions in Subsection R414-305-4(3) and (4) are not counted as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community based services under one of the waiver programs.

R414-305-5. Transfer of Resources for A, B and D Medicaid and Family Medicaid.

There is no sanction for the transfer of resources.

R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.

(2) The Department applies the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a sanction period applies for a transfer of assets for less than fair market value. In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) If an individual or the individual's spouse transfers the home or life estate or any other asset on or after the look-back date based on an application for long-term care Medicaid services, the transfer requirements of 42 U.S.C. 1396p(c) and (e) apply.

(4) If an individual or the individual's spouse transfers assets in more than one month on or after February 8, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the sanction period. The Department applies partial month sanctions for transferred

amounts that are less than the monthly average private pay rate for nursing home services.

(5) In accordance with 42 U.S.C. 1396p(c), the sanction period for a transfer of assets that occurs on or after February 8, 2006, begins the first day of the month during or after which assets were transferred or the date on which the individual is eligible for Medicaid coverage and would otherwise be receiving institutional level care based on an approved application for Medicaid but for the application of the sanction period, whichever is later.

(a) If a previous sanction period is already in effect on the date the new sanction period would begin, the new sanction period begins immediately after the previous one ends.

(b) Sanction periods are applied consecutively so that they do not overlap.

(6) If an individual or spouse transfers assets in more than one month before February 8, 2006, the uncompensated value of all transfers that occurred in each month are combined to determine the sanction period. The Department repeats this calculation for each month during which transfers occurred.

(a) For assets transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction period ends.

(b) If the total value of assets transferred in one month does not exceed the average private pay rate and the transfer occurred before February 8, 2006, the Department does not apply partial month sanctions.

(7) If assets are transferred during any sanction period, the sanction period for those transfers will not begin until the previous sanction has expired.

(8) If a transfer occurs, or the Medicaid eligibility agency discovers an unreported transfer, after an individual has been approved for Medicaid for nursing home or home and community based services, the sanction begins on the first day of the month after the month the asset is transferred.

(9) The statewide average private-pay rate for nursing home care in Utah used to calculate the sanction period for transfers is $4,526 per month.

(10) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4), that meets the criteria in Section R414-305-4 does not have to meet the actuarially sound test.

(11) The Department shall not impose a sanction if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the state; and

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(i) Up to $7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the client cannot exceed $7,000.

(ii) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(iii) Any amount remaining after payments are made as defined in Subsection R414-305-6(11)(d)(i) and Subsection R414-305-6(11)(d)(ii) will be made to a remainder beneficiary named by the client.

(12) If the Medicaid eligibility agency determines that a sanction period applies for an otherwise eligible institutionalized person, the Medicaid eligibility agency shall notify the individual that the Department will not pay the costs for nursing home or other long-term care services because of the sanction. The notice shall include when the sanction period begins and ends. The individual may request a waiver of the sanction period based on undue hardship. The individual must send a written request for a waiver of the sanction period due to undue hardship to the Medicaid eligibility agency within 30 days of the date printed on the sanction notice. The request must include an explanation of why the individual believes undue hardship exists. The State will make a decision on the undue hardship request within 30 days of receipt of the request.

(13) An individual who claims an undue hardship as a result of a sanction period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources cannot access the asset immediately; however, the Department requires the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource.

(i) The State may determine it is unreasonable to require the client to take action if a knowledgeable source confirms based on facts showing that it is doubtful those efforts will succeed.

(ii) The State may determine that it is unreasonable to require the client to take action based on evidence that it would be more costly than the value of the resource, and

(b) Application of the sanction for a transfer of resources would deprive the individual of medical care such that the individual's life or health would be endangered, or would deprive the individual of food, clothing, shelter or other necessities of life.

(14) If the State waives the sanction period based on undue hardship, the Medicaid eligibility agency will notify the individual. The Department shall provide Medicaid coverage on the condition that the individual take all reasonable steps to regain the transferred assets. The Medicaid eligibility agency will notify the individual of the date the individual must provide verifications of the steps taken. The individual must, within the time frames set by the Medicaid eligibility agency, verify to the Medicaid eligibility agency that individual has taken all reasonable actions. The State shall review the undue hardship waiver and the actions the individual has taken to try to regain the transferred assets. The time period for the review shall not exceed six months. Upon such review, the State will decide if:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the Medicaid eligibility agency will notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps, they have proven unsuccessful and additional steps will likely be unsuccessful, in which case the Medicaid eligibility agency will notify the individual that no further actions are required and if the individual continues to meet eligibility criteria, the Department will not apply the sanction period; or

(c) The individual has not taken all reasonable steps, in which case the Department will discontinue the undue hardship waiver, the sanction period will then be applied and the individual will be responsible to repay Medicaid for services and benefits received during the months the undue hardship waiver was in place.

(15) Based on a review of the facts about what happened

to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the State may determine that the individual cannot recover or regain the transferred resource. If the State decides that the assets cannot be recovered and that applying the sanction will result in undue hardship, the Department will not apply a sanction period or will end a sanction period that has already begun.

(16) The State bases its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The State compares the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide if the financial situation creates an undue hardship. The Medicaid eligibility agency shall send a written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision that is mailed to the individual to file a request for a fair hearing.

(17) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The Department deducts the value of any fully paid burial plot, as defined in R414-305-1(3)(a), from such burial trust first before determining the amount transferred.

R414-305-7. Home and Community-Based Services Waiver Resource Provisions.

(1) The resource limit is $2,000.

(2) Following the initial month of eligibility, continued eligibility is determined by counting only the resources that belong to the client.

(3) For married clients, spousal impoverishment resource rules apply as defined in R414-305-3.

R414-305-8. QMB, SLMB, and QI Resource Provisions.

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1999 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI resource limit is $4,000 for an individual and $6,000 for a couple.

R414-305-9. Treatment of Annuities.

This section defines how annuities are treated in the determination of eligibility for Medicaid.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased on or after February 8, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) applies. The Department treats annuities purchased on or after February 8, 2006 that do not meet the requirements of 42 U.S.C. 1396p(c) as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-9(4), annuities in which the individual, the individual's spouse or a minor individual's parent has an interest are counted as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The Department presumes that a market exists that will purchase annuities or the stream of income from annuities, and therefore, they are available resources. The individual can rebut the presumption that the annuity can be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annunites or the revenue stream from annuities, in which case, the Department will not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category Medicaid, the Department excludes an annuity from countable resources in the form of the periodic payment if it meets the requirements of this subsection (4). For Family-Related Medicaid programs, all annuities are countable resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes such annuities on or after February 8, 2006, then the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) Annuities purchased after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the Medicaid eligibility agency that the change in beneficiary has been made by the date requested by the Medicaid eligibility agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the Department applies the applicable sanction period. If the Medicaid eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the sanction period will begin effective the day after the closure date.

(6) The Department treats an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. Such actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(7) If a sanction for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity

to name the State as the preferred remainder beneficiary of the annuity, the sanction for a transfer will not end until the date such change of beneficiary has been completed and verified to the Medicaid eligibility agency. The sanction period will not be rescinded.

(8) If all information about annuities the individual or spouse has an interest in is not provided by the requested due date, the Medicaid eligibility agency will deny the application. The individual may reapply, but the original application date will not be protected.

(9) The issuer of the annuity must inform the Medicaid eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity must inform the State if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the Medicaid agency.

KEY: Medicaid, resources
October 22, 2009 26-18
Notice of Continuation January 31, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-501. Preadmission Authorization, Retroactive Authorization, 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 Section 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 most current 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) "Medicaid resident" means a resident who is a Medicaid recipient.

(8) "Medicaid admission date" means the date the nursing facility requests Medicaid reimbursement to begin.

(9) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(10) "Minimum Data Set (MDS)" means the standardized, primary screening and assessment tool of health status that forms the foundation of the comprehensive assessment for all residents in a Medicare or Medicaid certified long-term care facility.

(11) "Nursing facility" is defined in 42 USC. 1396r(a), and also includes an intermediate care facility for people with mental retardation as defined in 42 USC 1396d(d).

(12) "Nursing facility applicant" is an individual for whom the nursing facility is seeking Medicaid payment.

(13) "Preadmission Screening and Resident Review (PASRR) Level I Screening" means the preadmission identification screening described in Section R414-503-3.

(14) "Preadmission Screening and Resident Review (PASRR) Level II Evaluation" means the preadmission evaluation and resident review for serious mental illness or mental retardation described in Section R414-503-4.

(15) "Physician Certification" is a written statement from the Medicaid resident's physician that certifies the individual requires nursing facility services.

(16) "Resident" means a person residing in a Medicaid-certified nursing facility.

(17) "Serious mental illness" is defined by the State Mental Health Authority.

(18) "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.

(19) "Skilled care" means those services defined in 42 CFR 409.32.

(20) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and Section R432-150-23.

(21) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(22) "United States Code (USC)" means the most current edition unless otherwise noted.

(23) "Working days" means all work days as defined by the Utah Department of Human Resource Management.

R414-501-3. Preadmission Authorization.

(1) A nursing facility will perform a preadmission assessment when admitting a nursing facility applicant. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility must obtain prior approval from the Department before admitting a nursing facility applicant. A request for prior approval may be in writing or by telephone and will include:

(a) the name, age, and Medicaid eligibility of the nursing facility applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the reason for acute care inpatient hospitalization or emergency placement, if any;

(d) a description of the care and services needed;

(e) the nursing facility applicant's current functional and mental status;

(f) the established diagnoses;

(g) the medications and treatments currently ordered for the nursing facility applicant;

(h) a description of the nursing facility applicant's discharge potential;

(i) the name of the hospital discharge planner or nursing facility employee who is requesting the prior approval;

(j) the Preadmission Screening and Resident Review (PASRR) Level I screening, except the screening is not required for admission to an intermediate care facility for people with mental retardation; and

(k) the Preadmission Screening and Resident Review (PASRR) Level II determination, as required by 42 CFR 483.112.

(4) If the Department gives a telephone prior approval, the nursing facility will submit to the Department within five working days a preadmission transmittal for the nursing facility applicant, and will begin preparing the complete contact for the nursing facility applicant. The complete contact is a written application containing all the elements of a request for prior authorization plus:

(a) the preadmission continued stay transmittal;

(b) a history and physical;

(c) the signed and dated physician's orders, including physician certification; and

(d) an MDS assessment completed no later than 14

calendar days after the resident is admitted to a nursing facility.

(5) The requirements in Subsection R414-501-3 do not apply in cases in which a facility is seeking Retroactive Authorization described in Subsection R414-501-5.

R414-501-4. Immediate Placement Authorization.

(1) The Department will reimburse a nursing facility for five days if the Department gives telephone prior approval for a resident who is an immediate placement.

(a) An immediate placement will 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) A disaster or other emergency as defined by the Department has occurred.

(b) The Department will deny an immediate placement unless the PASRR Level I screening is completed and the Department determines a PASRR Level II evaluation is not required, or if the PASRR Level II evaluation is required, then the PASRR Level II evaluation is completed and the department determines the nursing facility applicant qualifies for placement in a nursing facility. The two exceptions to this requirement are when the nursing facility applicant is a provisional placement for less than seven days or when the placement is after an acute hospital admission and the physician certifies in writing that the placement will be for less than 30 days.

(c) Telephone prior approval for an immediate placement will be effective for no more than five working days. During that period the nursing facility will submit a preadmission transmittal, and will begin preparing the complete contact for the nursing facility applicant. If the nursing facility fails to submit the preadmission transmittal in a timely manner, the Department will not make any payments until the Department receives the preadmission transmittal and the nursing facility complies with all preadmission requirements.

R414-501-5. Retroactive Authorization.

A nursing facility may complete a written request for Retroactive Authorization. If approved, the authorization period will begin a maximum of 90 days prior to the date the authorization request is submitted to the Department. The request for Retroactive Authorization will include documentation that will demonstrate the clinical need for nursing facility care at the time of the requested Medicaid admission date. The documentation must also demonstrate the clinical need for nursing facility care as of the current date. This documentation will allow the Department's medical professionals to determine the clinical need for nursing facility care during both the retroactive period and the current period. Documentation will include:

(a) the name of the nursing facility employee who is requesting the authorization;

(b) the Retroactive Authorization request submission date;

(c) the requested Medicaid admission date;

(d) a description of why Retroactive Authorization is being requested;

(e) the name, age, and Medicaid identification number of the nursing facility applicant;

(f) the PASRR Level I screening; except the screening is not required for admission to an intermediate care facility for people with mental retardation;

(g) the PASRR Level II determination as required by 42 CFR 483.112;

(h) a history and physical;

(i) signed and dated physician's orders, including the physician certification;

(j) MDS assessment that covers the time period for which Medicaid reimbursement is being requested; and

(k) a copy of a Medicare denial letter, a Medicaid eligibility letter, or both, as applicable.

R414-501-6. Readmission After Hospitalization.

When a Medicaid resident is admitted to a hospital, the Department will 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 will complete the Preadmission Authorization process again including revising the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

R414-501-7. Continued Stay Review.

(1) The Department will 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.

(2) If a question regarding placement or the ongoing need for nursing facility services 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 will make appropriate personnel and information reasonably accessible so the Department can conduct the continued stay review.

(4) A nursing facility will inform the Department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge or a change from the findings in the PASRR Level I screening or PASRR Level II evaluation. A nursing facility will 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. With any significant change, the nursing facility is responsible to revise the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

(5) The Department will 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 will report all such instances to the Department. The resident will complete all preadmission requirements before the Department may approve payment for further nursing facility services.

R414-501-8. Payment Responsibility.

(1) 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 will 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 will be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.

(2) For Preadmission Authorization requests described in Section R414-501-3, the Department will deny payment to a nursing facility for services provided:

(a) before the date of the verbal prior approval or the date postmarked on the envelope containing the written application, or the date the Department receives the written application (whichever is earliest);

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Preadmission Authorization request; or

(c) if the facility fails to comply with PASRR requirements.

(3) For Retroactive Authorization described in Section R414-501-5, the Department will deny payment to a nursing facility for services provided:

(a) greater than 90 days prior to the request for Retroactive Authorization;

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Retroactive Authorization request; or

(c) the facility fails to comply with PASRR requirements.

R414-501-9. General Provisions.

(1) The Department is solely responsible for approving or denying a Preadmission, Retroactive or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The Department is ultimately responsible for determining if a Medicaid resident has a clinical need for nursing facility services. If the Department determines a nursing facility applicant or Medicaid resident does not have a clinical need for nursing facility services, a written notice of agency action, in accordance with 42 CFR 431.200 through 431.246, 42 CFR 456.437 and 456.438 will be sent. If a nursing facility complies with all Preadmission Authorization, Retroactive Authorization and continued stay requirements for a Medicaid resident then the Department will provide coverage consistent with the State Plan.

(2) If a nursing facility fails to comply with all Preadmission Authorization, Retroactive Authorization or continued stay requirements, the Department will deny payment to the nursing facility for services provided to the nursing facility applicant. The nursing facility is liable for all expenses incurred for services provided to the nursing facility applicant on or after the date the nursing facility applicant applied for Medicaid. The nursing facility will not bill the nursing facility applicant or his legal representative for services not reimbursed by the Department due to the nursing facility's failure to follow Preadmission Authorization, Retroactive Authorization or continued stay rules.

(3) If the application is incomplete it will be denied. The Department will comply with notice and hearing requirements as defined in 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 nursing facility applicant. If the Department denies a claim, the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the Department receives the initial Preadmission or Retroactive Authorization request 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 Rule R410-14.

R414-501-10. Safeguarding Information of Nursing Facility Applicants and Residents.

(1) The Department adopts the standards and procedures for safeguarding information of nursing facility 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.

R414-501-11. 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.

R414-501-12. 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 nursing facility 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 there appears to be a potential for alternative Medicaid services, with the permission of the nursing facility applicant, the nursing facility will refer the name of the nursing facility applicant to one or more designated Medicaid home and community-based services program representatives for follow-up contact with the nursing facility applicant.

KEY: Medicaid
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Notice of Continuation August 20, 2009 **26-18-3**
63G-3-304(1)(a)

R428. Health, Center for Health Data, Health Care Statistics.
R428-15. Health Data Authority Health Insurance Claims Reporting.
R428-15-1. Purpose and Authority.

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in R428-1.

R428-15-2. Definitions.

These definitions apply to rule R428-15, in addition:

(1) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(2) "Carrier" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in 31A-1-301 (74), including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in 31A-1-301 (159), licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in 31A-1-301 (148)

(c) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code;

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy or health benefit plan funded by a self-insurance arrangement; or

(f) a dental stand-alone company as defined in 31A-8-101 (6).

(3) "Claim" means a request or demand on a carrier for payment of a benefit.

(4) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(5) "Health Insurance" has the same meaning as found in Subsection 31A-1-301.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R428-15-3. Reporting Requirements.

(1) Each carrier shall submit enrollment, medical claims, and pharmacy data described in R428-15-5 where Utah is the patient's primary residence and enrollment, medical claims, and pharmacy data for services provided out of state to Utah residents.

(2) Each carrier shall begin submitting the required data to the office no later than October 17, 2009. The initial data submission must be completed by November 15, 2009. The initial data submission shall be for claims incurred from January 1, 2007 through December 31, 2008 and which are paid through September 30, 2009. Thereafter, each carrier shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

R428-15-4. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

R428-15-5. Required Data Elements.

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each carrier shall submit data for all fields contained in the submission specifications if the data are available to the carrier.

(a) Each carrier must submit enrollment files as a flat file.

(b) Each carrier must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional claim.

(c) Each carrier must submit pharmacy claims as a flat file.

(2) Enrollment Files. Each carrier must submit the following data elements for each enrollment file:

(a) Record Type
(b) Transaction Code
(c) File Create Date
(d) Member ID
(e) Social Security Number
(f) Member's Relationship to Subscriber
(g) Last Name
(h) First Name
(i) Middle Name
(j) Sex
(k) Street
(l) City
(m) State
(n) Zip Code
(o) Primary Phone
(p) Birth date
(q) Race
(r) Ethnicity
(s) Primary/Secondary
(t) Designated Primary Care Physician
(u) PCP ID
(v) Healthplan Code
(w) Benefit Option Code
(x) Option Effective Date
(y) HP Termination Date
(z) Employer Group Code
(aa) Patient ID
(bb) Health Plan Description
(cc) Orig. HP Effective Date
(dd) Member Status.

(3) Professional Medical Claims. Each carrier must submit the following data elements for each professional medical claim:

(a) Data Element - Data Element Description
(b) BHT06 - BHT Beginning of Hierarchical Trans
(c) GS08 - Functional Group Header
(d) GS07 - Functional Group Header

(e) Submitter Information
(i) 1000A NM103 - Submitter Name
(ii) 1000A NM109 - Submitter Identifier
(iii) 1000A PER01-05 - Submitter EDI Contact Information
(f) 1000B NM103 - Receiver Name
(g) 1000B NM109 - Receiver Identifier
(h) Billing Provider
(i) 2010AA NM103 - Billing Provider Name
(ii) 2010AA NM109 - Billing Provider ID
(iii) 2010AA REF02 - Billing Provider Secondary ID
(i) 2000B SBR02 - Individual Relationship Code
(j) 2000B SBR03 - Insured Group or Policy Number
(k) 2010BB NM103 - Payer Name
(l) Subscriber Information
(i) 2010BA NM103 - Subscriber Lname
(ii) 2010BA NM104 - Subscriber Fname
(iii) 2010BA NM105 - Subscriber Middle Name
(iv) 2010BA NM109 - Subscriber Primary Identifier
(v) 2010BA N301 - Subscriber Address1
(vi) 2010BA N302 - Subscriber Address2
(vii) 2010BA N401 - Subscriber City Name
(viii) 2010BA N402 - Subscriber State
(ix) 2010BA N403 - Subscriber Zip Code
(x) 2010BA DMG20 - Subscriber Date of Birth
(xi) 2010BA DMG03 - Subscriber Sex
(xii) 2010BA REF01 - Subscriber Secondary ID Qualifier
(xiii) 2010BA REF02 - Subscriber Secondary ID
(m) Patient Information
(i) 2000C PAT01 - Patients Relationship to Insured
(ii) 2010CA NM103 - Patient Lname
(iii) 2010CA NM104 - Patient Fname
(iv) 2010CA NM105 - Patient Middle Name
(v) 2010CA NM109 - Patient Primary Identifier
(vi) 2010BA/2010CA N301 - Patient Address1
(vii) 2010CA N302 - Patient Address2
(viii) 2010CA N401 - Patient City Name
(ix) 2010CA N402 - Patient State
(x) 2010CA N403 - Patient Zip Code
(xi) 2010CA DMG02 - Patient Date of Birth
(xii) 2010CA DMG03 - Patient Sex
(xiii) 2010CA REF01 - Patient Secondary ID Qualifier
(xiv) 2010CA REF02 - Patient Secondary ID
(n) 2300 CLM05-1 - Facility Type Code
(o) 2300 CLM05-3 - Claim Frequency Type Code
(p) 2300 REF02 When REF01 = F8 - Original Reference Number
(q) 2300 CLM01 - Patient Account Number
(r) 2300 REF02 When REF01 = EA - Medical Record Number
(s) 2300 CLM02 - Total Claim Charge Amount
(t) 2300 AMT02 When AMT01 = F5 - Patient Paid Amount
(u) 2320 AMT02 When AMT01 = D - COB Payer Paid Amount
(v) 2310D NM103 - Service Facility Name
(w) 2310D NM109 - Service Facility ID Code
(x) 2330B DTP03 When DTP01 = 573 - Claim Adjudication Date
(y) 2320 AMT02 When AMT01 = B6 - COB Allowed Amount
(z) Claim Adjustment Information
(i) 2320 CAS01 - Claim Adjustment Group Code
(ii) 2320 CAS02 - Claim Adjustment Reason Code
(iii) 2320 CAS03 - Claim Level Adjustment Amount
(aa) 2310D NM109 - Laboratory or Facility Primary Identifier
(bb) Diagnosis Information
(i) 2300 HI01 -2 - Principal Diagnosis
(ii) 2300 HI02 -2
(iii) 2300 HI03 -2
(iv) 2300 HI04 -2
(v) 2300 HI05
(vi) 2300 HI06 -2
(vii) 2300 HI07 -2
(viii) 2300 HI08 -2
(ix) 2300 HI09 -2
(x) 2300 HI10
(xi) 2300 HI11 -2
(xii) 2300 HI12 -2
(cc) 2310B PRV03 or 2000A - Rendering Provider Specialty
(dd) Rendering Provider Information
(i) 2310B NM103 - Rendering Provider LName
(ii) 2310B NM104 - Rendering Provider FName
(iii) 2310B NM105 - Rendering Provider Name Middle
(iv) 2310B NM107 - Rendering Provider Name Suffix
(v) 2310B NM109 - Rendering Provider Primary Identifier
(vi) 2310B REF02 - Rendering Provider Secondary ID
(ee) 2400 LX01 - Line Counter
(ff) 2400 DTP03 WHEN DTP01 = 472 - Date(s) of Service
(gg) Provider Modifiers
(i) 2400 SV101-2
(ii) 2400 SV101-3
(iii) 2400 SV101-4
(iv) 2400 SV101-5
(v) 2400 SV101-6
(hh) 2400 SV104 - Days or Units
(ii) 2400 SV102 - Line Item Charge Amount
(jj) 2400 AMT02 - Allowed Amount
(kk) 2410 LIN03 - Drug Identification
(ll) 2410 REF02 When REF01 = XZ - Prescription Number
(mm) Drug Information
(i) 2410 CTP05-1 - Drug Units Qualifier
(ii) 2410 CTP04 - Drug Number of Units
(iii) 2410 CTP03 - Drug Cost or Unit Price
(nn) Line Adjustment Codes
(i) 2430 CAS01 - Line Adjustment Group Code
(ii) 2430 CAS02 - Line Adjustment Reason Code
(iii) 2430 CAS03 - Line Level Adjustment Amount.

(4) Institutional Medical Claims. Each carrier must submit the following data elements for each institutional medical claim:
(a) BHT01 BHT06 - Hierarchical Structure Code
(b) GS08 - Functional Group Header
(c) GS01 - Functional Group Header
(d) Submitter Information
(i) 1000A NM103 - Submitter Name
(ii) 1000A NM109 - Submitter Identifier
(iii) 1000A PER01-05 - Submitter EDI Contact Information
(e) 1000B NM103 - Receiver Name
(f) 1000B NM109 - Receiver Identifier
(g) Billing Provider Information
(i) 2010AA NM103 - Billing Provider Name
(ii) 2010AA NM109 - Billing Provider ID
(iii) 2010AA REF02 - Billing Provider Secondary ID
(h) 2000B SBR02 - Individual Relationship Code
(i) 2000B SBR03 - Insured Group or Policy Number
(j) 2010BC NM103 - Payer Name
(k) Subscriber Information
(i) 2010BA NM103 - Subscriber Lname
(ii) 2010BA NM104 - Subscriber Fname
(iii) 2010BA NM105 - Subscriber Middle Name
(iv) 2010BA NM109 - Subscriber Primary Identifier
(v) 2010BA N301 - Subscriber Address1

(vi) 2010BA N302 - Subscriber Address2
(vii) 2010BA N401 - Subscriber City Name
(viii) 2010BA N402 - Subscriber State
(ix) 2010BA N403 - Subscriber Zip Code
(x) 2010BA DMG02 - Subscriber Date of Birth
(xi) 2010BA DMG03 - Subscriber Sex
(xii) 2010BA REF01 - Subscriber Secondary ID Qualifier
(xiii) 2010BA REF02 - Subscriber Secondary Identification
(l) Patient Information
(i) 2000C PAT01 - Patients Relationship to Insured
(ii) 2010CA NM103 - Patient Lname
(iii) 2010CA NM104 - Patient Fname
(iv) 2010CA NM105 - Patient Middle Name
(v) 2010CA NM109 - Patient Primary Identifier
(vi) 2010BA/2010CA N301 - Patient Address1
(vii) 2010CA N302 - Patient Address2
(viii) 2010CA N401 - Patient City Name
(ix) 2010CA N402 - Patient State
(x) 2010CA N403 - Patient Zip Code
(xi) 2010CA DMG02 - Patient Date of Birth
(xii) 2010CA DMG03 - Patient Sex
(xiii) 2010CA REF01 - Patient Secondary ID Qualifier
(xiv) 2010CA REF02 - Patient Secondary Identification
(m) 2300 CLM05-1 - Facility Type Code
(n) 2300 CLM05-3 - Claim Frequency Type Code
(o) 2300 REF02 When REF01 = F8 - Original Reference Number
(p) 2300 DTP03 When DTP01 = 435 - Admission Date/Hour
(q) Institutional Claim Code Information
(i) 2300 CL101 - Institutional Claim Code Admit Type
(ii) 2300 CL102 -Institutional Claim Code Admit Source
(iii) 2300 CL103 - Institutional Claim Code Pt Status
(r) 2300 HI01-2 When HI01-1 = DR - Diagnosis Related Group (DRG)
(s) 2300 DTP03 when DTP01 = 434 - Statement Date
(t) 2300 DTP03 WHEN DTP01 = 096 - Discharge Date
(u) 2300 DTP03 When DTP01 = 096 - Discharge Hour
(v) 2300 CLM01 - Patient Account Number
(w) 2300 REF02 When REF01 = EA - Medical Record Number
(x) 2300 CLM02 - Total Claim Charge Amount
(y) 2300 AMT02 When AMT01 = F5 - Patient Paid Amount
(z) 2320 AMT02 WHEN AMT01 = C4 - Payer Prior Payment
(aa) 2310E NM103 - Service Facility Name
(bb) 2310E NM109 - Service Facility ID Code
(cc) 2330B DTP03 WHEN DTP01 = 573 - Claim Adjudication Date
(dd) 2320 AMT02 When AMT01 = B6 - COB Total Allowed Amount
(ee) Claim Adjustment Information
(i) 2320 CAS01 - Claim Adjustment Group Code
(ii) 2320 CAS02 - Claim Adjustment Reason Code
(iii) 2320 CAS03 - Claim Level Adjustment Amount
(ff) 2310E NM109 - Laboratory or Facility Primary ID
(gg) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information PAT
(i) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 1
(ii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 2
(iii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 3
(hh) 2300 K3 - Present on Admission Indicator
(ii) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information Admitting DX
(i) 2300 HI02-2 When HI02-1 = BJ
(ii) 2300 HI01-2 When HI01-1 = BK
(jj) Other Diagnosis Information
(i) 2300 HI01-2 When HI01-1 = BF
(ii) 2300 HI02-2 When HI02-1 = BF
(iii) 2300 HI03-2 When HI03-1 = BF
(iv) 2300 HI04-2 When HI04-1 = BF
(v) 2300 HI05-2 When HI05-1 = BF
(vi) 2300 HI06-2 When HI06-1 = BF
(vii) 2300 HI07-2 When HI07-1 = BF
(viii) 2300 HI08-2 When HI08-1 = BF
(ix) 2300 HI09-2 When HI09-1 = BF
(x) 2300 HI10-2 When HI10-1 = BF
(xi) 2300 HI11-2 When HI11-1 = BF
(xii) 2300 HI12-2 When HI12-1 = BF
(kk) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information
(i) 2300 HI03-2 When HI03-1 = BN E-Code 1
(ii) 2300 HI03-2 When HI03-1 = BN E-Code 2
(iii) 2300 HI03-2 When HI03-1 = BN E-Code 3
(ll) 2300 HI01-2 When HI01-1 = BR Principal Procedure Code Principal Procedure
(mm) 2300 HI01-4 When HI01-1 = BR Principal Procedure Date
(nn) Other Procedure Codes and Dates
(i) 2300 HI01-2 When HI01-1 = BQ Other Procedure Code
(ii) 2300 HI01-4 When HI01-1 = BQ Other Procedure Date
(iii) 2300 HI02-2 When HI02-1 = BQ Other Procedure Code
(iv) 2300 HI02-4 When HI02-1 = BQ Other Procedure Date
(v) 2300 HI03-2 When HI03-1 = BQ Other Procedure Code
(vi) 2300 HI03-4 When HI03-1 = BQ Other Procedure Date
(vii) 2300 HI04-2 When HI04-1 = BQ Other Procedure Code
(viii) 2300 HI04-4 When HI04-1 = BQ Other Procedure Date
(ix) 2300 HI05-2 When HI05-1 = BQ Other Procedure Code
(x) 2300 HI05-4 When HI05-1 = BQ Other Procedure Date
(oo) Attending Physician Information
(i) 2000A or 2310A PRV03 - Attending Physician Specialty Information
(ii) 2310A NM103 - Attending Physician LName
(iii) 2310A NM104 - Attending Physician FName
(iv) 2310A NM105 - Attending Physician Name Middle
(v) 2310A NM107 - Attending Physician Name Suffix
(vi) 2310A NM109 - Attending Physician Primary ID
(vii) 2310A REF02 - Attending Physician Secondary ID
(pp) 2400 LX01 - Line Counter
(qq) 2400 DTP03 When DTP01 = 472 Date(s) of Service
(rr) Institutional Service Line Codes
(i) 2400 SV202-2 - Institutional Service Line Product/Service ID
(ii) 2400 SV202-3 - Institutional Service Line Procedure Modifier - 1
(iii) 2400 SV202-4 - Institutional Service Line Procedure Modifier - 2
(iv) 2400 SV202-5 - Institutional Service Line Procedure Modifier - 3
(v) 2400 SV202-6 - Institutional Service Line Procedure Modifier - 4
(vi) 2400 SV201 - Institutional Service Line (Revenue Codes)
(ss) 2400 SV205 - Service Units
(tt) 2400 SV203 - Line Item Charge Amount
(uu) Drug Information

(i) 2410 LIN03 - Drug Identification
(ii) 2410 REF02 when REF01 = XZ - Prescription Number
(iii) 2410 CTP05-1 - Drug Units Qualifier
(iv) 2410 CTP04 - Drug Number of Units
(v) 2410 CTP03 - Drug Cost or Unit Price
(vv) Line Adjustment Codes
(i) 2430 CAS01 - Line Adjustment Group Code
(ii) 2430 CAS02 - Line Level Adjustment Reason Code
(iii) 2430 CAS03 - Line Level Adjustment Amount.

(5) Pharmacy claims. Each carrier must submit the following data elements for each pharmacy claim:
(a) Payer Name
(b) Insured Group or Policy Number
(c) Subscriber Information
(i) Subscriber Last Name
(ii) Subscriber First Name
(iii) Subscriber Middle Name
(iv) Subscriber Primary Identifier
(v) Subscriber Address
(vi) Subscriber Address 2
(vii) Subscriber City
(viii) Subscriber State
(ix) Subscriber Zipcode
(x) Subscriber Phone
(xi) Subscriber Date of Birth
(xii) Subscriber Sex
(xiii) Subscriber Secondary Identification Qualifier
(xiv) Subscriber Secondary Identification
(d) Patient Information
(i) Patients Relationship to Insured
(ii) Patient Last name
(iii) Patient First name
(iv) Patient Middle Name
(v) Patient Primary Identifier
(vi) Patient Address
(vii) Patient Address 2
(viii) Patient City
(ix) Patient State
(x) Patient ZipCode
(xi) Patient Phone
(xii) Patient Date of Birth
(xiii) Patient Sex
(xiv) Patient Secondary Identification Qualifier
(xv) Patient Secondary Identification
(e) RxClaimNo
(f) RxClaimNoCrossRef
(g) RxNo
(h) PBMMebID
(i) RXClaimTxnType
(j) RxType
(k) RxClaimXrefNo
(l) RxAdjType
(m) SubscriberSfx
(n) Prescriber Information
(i) RxPrescriberID
(ii) RxPrescriberNoType
(iii) RxPrescriberName
(o) RxPharmacyNo
(p) MembMcareSTatus
(q) RxWrittenDt
(r) RxFilledDt
(s) Reject Codes
(i) Reject Code 1
(ii) Reject Code 2
(iii) Reject Code 3
(iv) Reject Code 4
(v) Reject Code 5
(t) RxPaidDt
(u) RxTotalPdAmt
(v) PatientPaidAmount
(w) RxQualifier
(x) RxID
(y) RxNDC
(z) RxTradeNm
(aa) RxGenericNm
(bb) GCNNumber
(cc) GPINumber
(dd) UnitsOfMeasure
(ee) UnitDoseIndicator
(ff) DispensingStatus
(gg) QuantityIntended
(hh) RxMtrcFilQty
(ii) RxDaysSupplyNo
(jj) DrugStrength
(kk) DosageDescription
(ll) CompoundIndicator
(mm) RxNoRefills
(nn) RxRefillNo
(oo) RxDAWCode
(pp) Therapeutic ClassCode - AHFS
(qq) USC Code
(rr) DEA Class of Drug
(ss) Drug Class
(tt) Drug Category Code
(uu) RxBrandInd
(vv) RecordDateTimeStamp.

R428-15-6. Exemptions.

A carrier that covers fewer than 200 individual Utah residents is exempt from all requirements of this rule.

R428-15-7. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R428-15-8. Carrier Registration.

Each carrier shall register with the Office by completing the registration on line at: http://health.utah.gov/hda/apd/ . Each carrier shall register by September 21, 2009 and annually thereafter by September 1 of each year.

R428-15-9. Testing of Files.

(1) Prior to October 5, 2009, each carrier required to report under this rule shall submit to the Office a dataset for determining compliance with the standards for data submission. This test dataset must be in the same format as required by the technical specifications document and shall contain data for any month within 2007 or 2008.

(2) Each carrier must meet with the Office prior to the carrier's initial data submission to review individual submission formatting. The carrier must contact the Office to arrange this meeting by September 30, 2009.

(3) Carriers that become subject to this rule after September 21, 2009 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R428-15-10. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the carrier must submit for each enrolled member and claim. A carrier whose submission is rejected shall resubmit the

data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.

R428-15-11. Replacement of Data Files.

A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the carrier can establish exceptional circumstances for the replacement.

R428-15-12. Limitation of Liability.

As provided in Utah Code Section 26-25-1, a carrier that submits data pursuant to this rule, including third-party administrators that submit employee data, is not liable for providing the information to the Department.

R428-15-13. Penalties.

Pursuant to Section 26-23-6, a carrier that violates any provision of this rule may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(1) Not to exceed the sum of $10,000 per violation

(2) Each day of violation is a separate violation.

KEY: APD, all payer database, health care quality, transparency

October 27, 2009 **26-33a**

26-25

R510. Human Services, Aging and Adult Services.
R510-104. Nutrition Programs for the Elderly (NPE).
R510-104-1. Purpose.

This Rule explains and clarifies the senior nutrition programs administered in Utah.

R510-104-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001

R510-104-3. Nutrition Services Principles.

(1) The Division shall develop a comprehensive and coordinated nutrition service system statewide. The Division shall encourage and assist the AAAs in utilization of resources to develop greater capacity in their nutrition programs and services. The Division will approve a nutrition screening tool that will be used to identify nutritional risk or malnutrition. All seniors participating in the Nutrition Program For The Elderly, Congregate and Home Delivered Meals, are strongly encouraged to complete the nutrition screen. If an individual does not want to fill out the screening form, he or she will not be denied a meal. A nutrition screen may be required by a AAA for a client to receive liquid meals.

(2) The Division shall monitor, coordinate, and assist in the planning of nutritional services with the advice of a registered dietitian or an individual with comparable expertise. The nutrition service system shall provide older Utahns, particularly those in the greatest economic and social need categories, with particular attention to low-income and low-income minorities, access and outreach to nutrition services, nutrition education and nutritionally sound meals, to promote better health through improved diet.

(3) Policy and Procedures approved by the Utah State Board of Aging and Adult Services shall be used by the Division and its contractors/grantees in the conduct of all functions and responsibilities required in carrying out services and funding categories of the Title III Part C Nutrition Program, including Congregate Meals (Part C-1), Home-Delivered Meals (Part C-2), Nutrition Education and Nutrition Outreach, and the Nutrition Services Incentive Program (NSIP).

R510-104-4. Definitions.

(1) Congregate Meals -- Meals provided five or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide; which shall be provided in congregate settings, including adult day care facilities and multigenerational meal sites; and which may include nutrition education services and other appropriate nutrition services for older individuals.

(2) NSIP -- Nutrition Services Incentive Program. The NSIP Program authorizes cash payments to State Units on Aging (SUA) as a proportional share of the Federal fiscal year allocation. The allocation is based on the number of meals served by a single SUA in the previous year in proportion to the total number of meals served by all SUAs that year. Meals counted for purposes of NSIP reporting are those that satisfy the requirements of Title III-C of the OAA.

(3) Provisional Meals -- Meals delivered to a congregate meals participant who is unable to personally visit the congregate meals site for a limited period of time (to be determined by the AAA). The AAA has the discretion to determine what circumstances would make provisional meals appropriate.

(4) NPE -- Nutrition Programs for the Elderly. The term primarily refers to Congregate Meals and Meals on wheels which utilize state and federal funding to provide services to seniors, although Food Stamps may also be considered as a NPE.

(5) Division -- Utah State Division of Aging and Adult Services.

(6) AAA -- Area Agency on Aging.

(7) Dietary Guidelines for Americans -- The "Dietary Guidelines for Americans" has been published jointly every 5 years since 1980 by the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA). The Guidelines provide authoritative advice for people two years and older about how good dietary habits can promote health and reduce risk for major chronic diseases. They serve as the basis for Federal food and nutrition education programs. The Guidelines also clarify the Daily Reference Intake (DRI), which replaces the Recommended Daily Amounts (RDA) previously used to determine the nutritional values of the meals served under the nutrition programs. The complete document can be accessed at http://www.health.gov/dietaryguidelines/dga2005/document/default.htm

(8) Modified diets -- Now referred to as Medical Nutritional Therapy by the American Dietician Association, this refers to meals that have been altered to make them compatible with a particular client's nutritional needs. Examples include limiting sodium for a client with high blood pressure or restructuring the portions or components of a meal to accommodate a client with diabetes.

(9) NAPIS -- National Aging Program Information Systems. This system allows the Utah Division of Aging and Adult Services to report the services provided under Titles III and VII of the Older Americans Act. RTZ's GetCare system is the vehicle the Division uses to interface with the federal NAPIS system.

(10) Nutrition Case Manager -- the AAA staff person who evaluates a potential client's situation and recommends an appropriate nutrition plan (i.e., Meals on Wheels), as well as other services where appropriate.

(11) OAA -- The Older American's Act. Originally signed into law by President Lyndon B. Johnson the act created the Administration on Aging and authorizes grants to States for community planning and services programs, as well as for research, demonstration and training projects in the field of aging. Later amendments to the Act added grants to Area Agencies on Aging for local needs identification, planning, and funding of services, including but not limited to nutrition programs in the community as well as for those who are homebound; programs which serve Native American elders; services targeted at low-income minority elders; health promotion and disease prevention activities; in-home services for frail elders, and those services which protect the rights of older persons such as the long term care ombudsman program.

R510-104-5. General Provisions.

(1) Nutritional Requirements:

(a) Food Requirements: AAAs shall ensure that the meals provided through their nutrition projects comply with the DRI Guidelines for Americans. Compliance shall be documented for each meal served by the nutrition provider.

(i) Handbook 8 of USDA (located at http://www.nal.usda.gov/ref/USDApubs/aghandbk.htm#sortnbr)

(ii) Computer analysis based upon an acceptable software program approved by the Division.

(iii) Computation of food values for portions of food commonly used.

(b) Menu Cycles and Analysis:

(i) Nutrition providers shall send an approved copy of the menus to be used to the appropriate nutrition site(s) and to the AAA.

(c) A registered dietitian and/or nutritionist shall sign off on the menus and recipes used under the nutrition programs to ensure meals served meet DRI guidelines.) Any substitutions (deviations) from the approved menu(s) shall be documented and reported by the nutrition project director.

(ii) Service providers contracting with a third party shall stipulate in the contract that menus must be received by the service provider at least one week prior to use for analysis and approval.

(iii) Any substitutions to the original menus must be documented and kept on file. For audit purposes, menus shall be maintained for a minimum of 3 years, or until disposition is authorized by the grantor agency.

(d) Modified Diets:

(i) Modified diets shall be available to program participants. Each project will provide modified menus where the AAA director feels they are feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. The AAA shall be responsible for the method of obtaining orders for modified diets, maintaining such orders on file and reviewing them.

(e) Utensils for the Blind and Disabled: Upon request, the AAA may provide the appropriate food containers and utensils for the blind and the disabled. The provider is required to submit nutrition program data to the National Aging Program Information System (NAPIS).

(f) A cold "sack lunch" that meets the DRI requirements may be offered to eligible participants.

(g) A written copy of the appeal process shall be made available to those denied this service.

R510-104-6. Eligibility for Nutrition and Nutrition Support Services.

(1) All persons aged 60 and older and their spouses, regardless of his/her age, are eligible for OAA nutrition services. If sufficient resources are not available to serve all eligible individuals who request a service, the AAA shall ensure that preference is given to those of greatest social or economic need, with particular attention to low-income, limited English speaking individuals and low-income minorities.

(2) Other Individuals who may receive congregate and home-delivered meals at the election of the AAA include those listed below. These individuals do not need to pay for the meal, but are encouraged to make the recommended donation as a qualified senior would:

(a) Individuals with disabilities (who has not attained the age of 60), if they reside in a housing facility primarily occupied by elderly persons that has a congregate meal site funded by the OAA on the premises.

(b) Clients of Home and Community-Based Alternatives program who are under 60 may be allowed to participate in the nutrition program as capacity allows. To be eligible to receive meals through nutrition programs, the client's case manager must include nutrition services in the care plan. If the participant is under 60, the Alternatives program shall pay the actual cost of the meal as determined by the AAA, rather than the suggested donation.

(c) Individuals with disabilities who reside at home with and accompany to a congregate meal site an older individual who may be eligible under the Act.

(d) Volunteers who are specifically assist with the nutrition program may be given a meal regardless of age.

R510-104-7. Providers Selection.

(1) The AAA shall make awards for congregate and home-delivered nutrition services to providers that furnish either or both types of service. Each AAA shall assure that each service provider selected meets all applicable Federal, State and Local regulations.

(2) Each AAA, when feasible, shall give preference in making awards for home-delivered meal services to providers that meet the following:

(a) Organizations that have demonstrated an ability to provide home-delivered meals efficiently and reasonably, andthat furnish assurances to the AAA that they will maintain efforts to solicit voluntary support and that OAA funds made available will not be used to supplant funds from non-federal sources.

(b) Food service certification in applied food service sanitation by nationally recognized industry programs and approved by the Utah State Department of Health, shall be required for one person per shift where food is prepared and cooked for NPE meals.

(3) Each AAA shall provide a mechanism that will assure the review of need for home-delivered meals for absent participants at the Congregate Sites. Each AAA shall develop a policy, to be reviewed and approved by DAAS regarding regular attendees who cannot attend the congregate site due to illness or other reasons, which determines whether and how often a client may receive provisional meals delivered to them from the congregate site by a spouse, friend or volunteer. If provisional meals are needed, AAA staff must document the client's needs and should consider the appropriateness of encouraging the client to participate in the home delivered meal program.

R510-104-8. Additional Meal Policy.

(1) Nutrition providers may serve a second meal or third meal if planned as an objective in the Area Plan. When two meals are served per day, they shall provide 66 2/3% of the DRI. When three meals are served per day, they shall provide 100% of the DRI. Provision of more than one meal qualifies for NSIP reimbursement if each meal meets the 33 1/3% DRI. Second helpings of the same meal that do not constitute a complete meal (i.e., a second serving of mashed potatoes) do not qualify for NSIP reimbursement. A second complete meal complying with the DRI, provided to a senior as a second meal, does qualify for NSIP reimbursement.

(2) To qualify second meals in the local meal county reports for USDA reimbursement, AAAs will be allowed to serve up to 1.5% of the total meals per quarter in second meals without formally developing a local second meal policy. If second meals claimed in the local meal count reports are equal to or greater than 1.5% of total first meals per quarter, a second meal policy shall be developed by each local AAA for USDA reimbursement.

(3) Nutrition services providers may serve a second meal to Senior Citizens who have been identified through nutrition screening to be at nutritional risk and/or socially or economically in need. The AAA shall have written program objectives which are specific, verifiable, and achievable for nutrition service provider(s), including the number and frequency of meals to be served at each designated congregates site or center, and to individual recipients in the home delivered meal program, if providing more than 1.5% of total meals as second meals.

(a) Second meals should be packaged so that the food will more likely be kept at proper storage temperatures for a reasonable length of time.

(b) The participants who receive a second meal shall be given the opportunity to make a second confidential contribution for that meal.

(c) Records will be maintained by the nutrition provider(s) on all additional meals served to eligible participants.

R510-104-9. Emergency Meals.

(1) AAAs shall develop written procedures to be followed

by the service providers for the provision of emergency meals in the event of weather related emergencies, disasters, or situations which may interrupt meal service or the transportation of participants to the nutrition site. Through the intake, assessment, and re-evaluation process, clients will be identified who do not have food within their home, or through nearby support networks to provide the nutrition they need to last through short term emergencies.

R510-104-10. Outreach.

(1) Each nutrition provider shall establish outreach activities which encourage the maximum number of eligible clients to participate. Nutrition Education: Each project shall provide nutrition education on at least a semi-annual basis.

R510-104-11. Liquid Meals.

(1) In situations where nutritional considerations make solid foods inappropriate, the need for nutrient supplements to include liquid supplemental feedings (meeting the required RDI Guidelines) may be part of medical nutrition therapy recommended by a registered dietitian, registered nurse or physician, with the concurrence of the local AAA, primarily when the participant can not tolerate or digest regular meals. Exceptions to solid foods shall be documented by the nutrition case manager who shall record that other alternatives were tried but unsuccessful. All other sources of home-delivered meal modification should be exhausted before liquid supplemental feedings become the main nutritional regimen.

(2) Only seniors are eligible for liquid meals purchased through the Nutrition Program for the Elderly (NPE) funding. Exceptions can be made for Alternatives clients under 60. Additionally, AAAs always have the discretion to use county dollars in any way they see fit.

(3) A liquid meal shall only be offered in place of regular food as the first meal, if prescribed by a physician, dietitian, or nurse, or if an AAA makes an exception for a client who prefers a liquid meal, provided the AAA follows the process outlined below.

(a) In order to receive liquid meals through the Nutrition Programs for the Elderly (NPE), the participant must be a client and be determined to be at moderate to severe risk of malnutrition. The participant will fill out the following tools to arrive at a nutrition screening score if they would like an exception made to receive liquid meals without a health professional's prescription:

(i) A demographic questionnaire (for the AAA records).

(ii) The AAA's nutritional health screening tool.

(4) A liquid meal distributed through the AAAs' NPE Programs must meet the 33 1/3 DRI nutrient requirements. If the liquid meal is picked up by the client or client representative at a senior center, the meal will count as a congregate meal (C1) and if the liquid meal is delivered to the client's home by the AAA staff, the meal will be considered a home delivered meal (C2).

(5) The Participant may not be provided more than a one month supply of liquid supplement at one time.

(6) A confidential contribution system shall be in place with a suggested donation in order to qualify the liquid meal for the USDA cash-in-lieu reimbursement.

R510-104-12. Food Service Management.

(1) Food Service Management: All AAAs shall ensure the following:

(a) Each meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in storage, preparation, service, and delivery of meals to older adults. Compliance with current Serv-Safe guidelines (http://www.servsafe.com/) ensures proper compliance to the State and local requirements. All food used by the nutrition service provider(s) must meet standards of quality, sanitation, and safety applying to foods that are processed commercially and purchased by the project. No food prepared or canned in a home or any other non-licensed facility may be used in meals provided by a project financed through the nutrition service provider(s) award.

(b) Inventories: Each AAA shall require that accurate inventory records for consumable goods be maintained for four years by nutrition projects funded in whole or in part by the Older Americans Act funds. Either the periodic or perpetual system of inventory shall be acceptable, if conducted consistent with generally accepted inventory control principles.

(c) Training: The provider shall plan and provide training and supervision in sanitation, food preparation, and portion control by qualified personnel for all paid and volunteer staff who prepare, handle and serve food. Each of these individuals must have a current Food Handlers Permit.

(d) Refrigerated Storage: The refrigeration cooling period for hot food brought below 40 degrees Fahrenheit shall not exceed 4 hours.

(i) All prepared foods that are frozen in a nutrition project kitchen shall be chilled in a rapid chills system which reduces the temperature of foods to 70 degrees within 2 hours and shall be cooled to an internal product temperature of 41 degrees F or below within the following 2 hours.

(e) Frozen Food Requirements: All packaged frozen meals and freezing methods used to freeze meals utilized by the nutrition project, must meet the requirements of the State of Utah Health Department regulations.

(f) Hot Food Requirements:

(i) Beef products including hamburger shall be cooked to an internal temperature of 155 degrees F, poultry shall be cooked to an internal temperature of 165 degrees F and pork shall be cooked to an internal temperature of 165 degrees F.

(ii) All hot foods shall be maintained at 140 degrees F or above, from the time of final food preparation to completion of service.

(g) Cold Food Requirements: Cold foods shall be maintained at 41 degrees F or below from time of initial service to completion of service.

(h) The nutrition project shall make temperature checks of all prepared, received and transported meals.

(i) Staffing: The nutrition service provider shall:

(i) Be encouraged by the AAA to give preference to employing those qualified persons age sixty (60) and over, including those of greatest economic or social need;

(ii) Designate a person responsible for the conduct of the project who has the necessary authority to conduct day-to-day management functions of the provider;

(iii) Use a registered dietitian or nutritionist to provide necessary nutrition services.

(j) If serving a meal to staff under 60 deprives elderly target population individuals with reservations from securing a meal, other arrangements should be made for staff.

R510-104-13. Contribution Policy.

(1) The actual cost, as defined by the AAA and reported to the State, of a congregate meal shall be posted at the nutrition site. Suggested contribution and actual cost shall be posted in a prominent conspicuous location.

(2) Each eligible participant shall have an opportunity to voluntarily and anonymously contribute toward the cost of a provided meal service.

(3) Persons under the age of 60 shall pay the full cost of the meal, which shall be collected and accounted for separately. Exceptions can be made for the individuals previously listed (spouses of seniors regardless of age, individuals with disabilities who reside with seniors, individuals providing volunteer service, and underage individuals residing in senior

housing sites in which congregate meals are served) who are encouraged to make the standard meal donation.

(4) Each AAA shall establish and implement procedures which will protect the privacy of the client's decision to contribute or not contribute toward the meal service rendered.

(a) There shall be locked contribution boxes in a place where anonymous donations can be made, which shall not be monitored for contributions, in order to assure the confidentiality of the donation.

(5) Participant contributions shall be counted by two persons, and both individuals shall sign a form attesting to the correct count. A copy of such signed documentation shall be kept on file.

(6) Under no circumstances may an eligible client be denied service(s) by a provider who received funds from the AAA (for that service) because of the client's decision not to contribute for services rendered.

R510-104-14. Congregate Meals.

Requirements for Congregate Meal Providers:

(1) Each AAA and AAA Advisory Council, or local equivalent, shall determine the number of congregate sites to be established and their days of operation.

(2) Local AAA's must provide congregate meals a minimum of five days per week except in a rural area where such frequency is not feasible and a lesser frequency has been approved by the division).

(3) Leftover Food:

(a) All food transported to sites which becomes "leftover," except unopened prepackaged food, must be properly disposed of at the meal site or the main food preparation site in compliance with State Health Department regulations.

(b) AAAs shall develop policies and procedures to minimize leftover meals. Use of a reservation system for participation in the congregate meal program is recommended.

(c) Leftovers shall be offered to all participants as second helpings at those congregate settings which do not have on-site methods to preserve leftover food to meet the nutritional standards for later consumption which are approved by the State Health Department). If a complete meal is provided to a client as a second meal, the client shall be given an opportunity to make another confidential donation.

(d) Each nutrition site, in a location that is easily visible to patrons, shall have a disclaimer which states: "For Your Safety: Food removed from the center must be kept hot or refrigerated promptly. We cannot be responsible for illness or problems caused by improperly handled food."

(e) No food shall be taken from the site by staff.

(f) Leftover foods at on-site cooking facilities shall be properly refrigerated and incorporated into subsequent meals whenever possible.

(4) Food being served shall be protected from consumer contamination by the use of packaging or by the use of an easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other means which minimize human contact with the food being served. Enough hot or cold food serving containers shall be available to maintain the required temperature of potentially hazardous food.

R510-104-15. Home Delivered Meals.

All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be homebound, as defined below, shall be eligible for a home-delivered meal.

(1) Homebound Status:

(a) A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional or environmental condition.

(b) Homebound status shall be documented. The Division shall approve the method of assessment to ensure standard measurable criteria.

(c) Written documentation of eligibility shall be maintained by the AAA.

(d) Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually.

(i) A waiver of the full annual assessment may be approved by the AAA director or designee. A written statement of waiver shall be placed in the client's file and shall be reviewed annually.

(e) Top priority may be given to emergency requests. Home-delivered meals for an emergency may start as soon as possible after the determination of urgent need has been made. A full assessment will be made within 14 calendar days from the date of request to determine continued eligibility.

(2) Requirements for Home-Delivered Meal Providers:

(a) Home-delivered meal service within a Planning and Service Area (PSA) shall be available 5 or more days per week.

(b) Division approval must be obtained for Home-delivered meal plans that provide meals 4 days/week or less in rural areas.

(3) A home-delivered meal, intended for a meal client that cannot be delivered, may be given to another home-delivered meal client as a second meal. This second meal would qualify for NSIP reimbursement, provided the recipient meets the eligibility criteria.

R510-104-16. Financial Policies.

Project income generated by Title III-C can only be used to:

(1) expand the number of meals provided or to facilitate access to such meals (transportation and outreach);

(2) integrate systematic nutrition screening for nutrition/malnutrition and food insecurity; or

(3) to provide other supportive services directly related to nutrition services, such as outreach, information and referral, transportation, access to grocery shopping, help with food stamp procurement, social activities in conjunction with a meal, and nutrition education.

R510-104-17. Restriction on Use of Funds.

(1) Program income generated by OAA Title III Part C-1 and Part C-2 may be used as the additional alternative (to expand the number of meals provided, or to facilitate access to such meals or to provide other supportive services directly related to expanding nutrition services) or the cost sharing alternatives as stated in 45 CFR 92.259(g)(2) (to match federal and/or state funds) or, a combination of the two alternatives.

(2) To defray program costs, a AAA which serves as the nutrition provider may also perform Nutrition Services for other groups and programs outside the parameters of the Nutrition Program for the Elderly under the OAA, providing such services will not interfere with the project or programs for which the contract was originally granted. These extra nutrition activities shall be managed in a manner that does not impede the preparation or delivery of nutrition services to the elderly, and shall charge the full cost of preparation and delivery of the nutrition services as set forth by the provider. When persons 60 years of age and older participate in these "special events," they assume the identity of the activity and are obligated to pay the requested fee for participation. This shall not be confused with the donation policy of the Title III Nutrition Programs. A nutrition provider who contracts with a AAA is obviously free to serve other clients as it wishes.

R510-104-18. Nutrition Services Incentive Program (NSIP) Participation (Commodities and Cash-In-Lieu of Commodities).

Currently, the NSIP program is used by the federal

government to provide reimbursement for meals served under nutrition programs that meet the reporting criteria for federally funded meals. The NSIP reimbursements have, for the most part, replaced the U.S. Department of Agriculture (USDA) practice of presenting nutrition service providers with either food commodities or cash-in-lieu of commodities to supplement the nutrition providers' resources. However, the USDA reserves the right to provide cash or commodities in the future.

(1) Donated Food Standard Agreement: The AAA or nutrition service provider may enter into a written agreement with the Department of Human Services Federal Food Program of the State of Utah and shall follow all procedures of the "Agreement for Commodities Donated by the U.S. Department of Agriculture."

(2) USDA cash-in-lieu of commodities payments or revenue earned, depending on whether the accounting for the USDA program is on a cash or accrual basis, shall be used to offset the cost of raw food and the cost of purchased meals.

(3) Cash-In-Lieu of Commodities:

(a) AAAs shall promptly disburse all USDA cash-in-lieu of commodities to nutrition providers in their planning and service area that are funded with Title III Part C-1 and Part C-2 funds.

(b) AAAs shall ensure that payments received by providers in lieu of commodities shall be used solely for the purchase of:

(i) United States agricultural commodities and other foods produced in the United States; or

(ii) Meals furnished to them under contractual arrangements with food service management companies, caterers, restaurants, or institutions, have provided that each meal contains United States produce commodities or foods at least equal in value to the per meal cash payment which the nutrition service providers have received.

(4) Monitoring, Withholding or Recovering Cash Payments:

(a) The Division and the AAAs shall monitor and assess use of payments received in lieu of commodities. Such monitoring shall include periodic on site examination of all pertinent records maintained by service providers, as well as, all such records maintained by suppliers of meals purchased under contractual arrangements.

(b) The Division will withhold or recover cash payments in lieu of commodities from an AAA if it determines, through a review of such AAA's reports, program monitoring, financial review or audit, that the AAA has failed to comply with the provisions of this section, or otherwise have failed to adequately document the basis for payments received during the fiscal year.

(c) AAAs which do not expend the Cash-In-Lieu within a maximum of two quarters after it has been allocated by the Division shall be evaluated for need and other available resources at the local AAA. Their rate of entitlement may be reduced in succeeding allocation periods.

(5) USDA Documentation:

(a) AAAs shall ensure that the cost of the U.S. grown food purchased during the project year is at least equal to the amount of the USDA reimbursement under the cash in lieu of commodities program. This documentation shall be based on paid invoices.

(b) In the case of meals served under contractual arrangements with food service management companies, caterers, restaurants or institutions, copies of menus and invoices of food purchases that demonstrate that each meal served contained United States produced commodities or food at least equal in value to the per meal cash payments, constitutes adequate documentation.

R510-104-19. Transfer of Funds.

Statewide transfers between OAA Title III B and C awards shall not exceed 20%. Transfers between Part C-1 and Part C-2 awards shall not exceed 40% of any one funding category unless the Division requests and receives written approval from the U.S. Department of Health and Human Services Assistant Secretary for Aging.

R510-104-20. Documentation and Record Keeping Requirements.

(1) AAAs shall document and maintain all records and forms required to meet state and/or federal requires of the OAA and the USDA (United States Department of Agriculture) for three years.

(2) The number of participants participating in Title III C-1, C-1 and their names shall be kept on file in the Planning and Service Area for three years.

(3) AAAs shall work with the Division to complete the annual federal NAPIS (see definitions) reporting requirements by use of the current data management system or by other means as agreed to by the Division.

KEY: elderly, nutrition, home-delivered meals, congregate meals

July 21, 2009 62A-3-104

Notice of Continuation October 8, 2004 42 USC Section 3001

R512. Human Services, Child and Family Services.
R512-51. Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs.
R512-51-1. Purpose and Authority.

(1) The purpose of this rule is to enable the Division of Child and Family Services (Child and Family Services) to collect fees for processing criminal background screenings. These screenings are for prospective foster and adoptive parents of children in state custody and other adults in the home as required by Public Law 109-248 and Section 78A-6-308. These screenings are also for employees of other licensed programs upon request of the Office of Licensing as authorized by Section 62A-2-120, as capacity allows.

(2) This rule is authorized by Section 62A-4a-102.

R512-51-2. Fee Collection for Electronic Fingerprint Scanning.

(1) It is the responsibility of Child and Family Services Regional Offices to collect fees for electronic fingerprint scanning for the purpose of criminal background screening for prospective foster and adoptive parents of children in state custody and other adults in the home and for employees of other Department of Human Services licensed programs.

(2) The amount of the fee charged for electronic fingerprint scanning will be approved by Child and Family Services as required by Section 62A-4a-102 and will not exceed the amount being charged for the same service from the Department of Public Safety, Bureau of Criminal Identification.

R512-51-3. Fee Collection for Cost of Submission of Electronic Fingerprints for Criminal Background Check.

(1) Child and Family Services has the option to collect fees for all or part of the actual cost of submission of electronic fingerprints for criminal background checks through the Department of Public Safety, Bureau of Criminal Identification and the Federal Bureau of Investigation.

(2) Child and Family Services may elect to pay all or part of this cost for prospective foster and adoptive parents of children in state custody and other adults in the home, subject to legislative funding for this purpose.

(3) Child and Family Services will not pay any of the cost of submission of electronic fingerprints for criminal background checks for employees of other Department of Human Services licensed programs, but may submit the electronic fingerprints upon verification of payment of those fees by the Office of Licensing or designee.

KEY: criminal background screening, fees, foster care, adoption
October 22, 2009 **Pub. L. No. 109-248**
62A-4a-102
78A-6-308

R512. Human Services, Child and Family Services.
R512-60. Children's Trust Account.
R512-60-1. Purpose, Authority, Definitions, and Scope.

(1) The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's Trust Account, with the funding specified in Section 62A-4a-309.

(2) This rule is authorized by Section 62A-4a-102.

(3) Definitions. For the purposes of this section:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Children's Trust Account.

(b) "Child and Family Services" means the Division of Child and Family Services.

(c) "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

(d) "Director" means Director of Child and Family Services.

(4) Scope. Funds from the Children's Trust Account shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in 62A-4a-305.

R512-60-2. Functions of the Council.

The Council shall advise the Director regarding policies and procedures for the administration of the Children's Trust Account.

R512-60-3. Conflict of Interest.

(1) A Council member affiliated with an organization bidding for a trust account contract shall openly declare this conflict of interest.

(2) A Council member with a conflict of interest shall be excused from the discussion, consideration, or voting on any project or proposal in which the Council member has an affiliation.

(3) A Council member shall not exert undue influence or make any requests for favored consideration from the Council or Child and Family Services to receive a contract award from the State.

R512-60-4. Responsibilities of the Director.

In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(1) Designate a staff member to serve as the Administrator of the Children's Trust Account and as the liaison with the Council.

(2) Review policies and procedures regarding the administration of the Children's Trust Account which have been developed by the Council.

(3) Hold a public hearing for comments on the Children's Trust Account allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(4) Approve the allocation plan and prevention priorities prior to implementation.

(5) Approve policies of the Children's Trust Account.

R512-60-5. Proposal Requirements.

(1) A request for proposals (RFPs) shall be developed by the Administrator based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. The request for proposals shall specify the purposes and eligibility requirements for projects or programs to be funded through the Children's Trust Account. The proposal requirements may vary from year to year.

(2) The Administrator shall widely disseminate the RFPs. Project or program proposals shall be submitted as specified in the RFPs.

R512-60-6. Funding Limitations and Requirements.

(1) Funding for individual projects shall be at least $4,000 and shall not exceed $20,000 per year, and may have the option of being renewed according to the terms of the request for proposals. The Director may approve a funding level, recommended by the Council, which varies from this requirement for a program or project serving a geographical area encompassing more than one community or for a program or project of exceptional merit. If unobligated account revenues for a given year are less than $50,000, the Council may forego the RFP process for that year.

(2) Each program or project funded through the Children's Trust Account shall provide a dollar for dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind.

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

(3) Of the total monies available for allocation in the Children's Trust Account, 10% to 15% shall be for statewide programs.

(4) The remaining funds shall be awarded according to the allocation plan approved by the Director. This plan shall be based on monies available for allocation, the population percentage count by area, and a base amount of $1,000 to $2,000 recommended by the Children's Trust Fund Administrator.

R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Trust Account.

(1) Proposals received by Child and Family Services in response to the RFPs shall be reviewed according to the criteria specified in the RFPs, consistent with Section 62A-4a-307.

(2) The Administrator or Child and Family Services contract monitors shall negotiate contracts with successful offerors, based on State Purchasing Guidelines.

R512-60-8. Evaluation.

(1) Each program or project funded through the Children's Trust Account shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. The evaluation shall be completed at least 60 working days prior to the end of the contract year. A copy of the written evaluation shall be sent to the Administrator who will provide evaluation information to the Council.

(2) If the Director contracts for evaluation services, the contract may not exceed $500 per grantee per year.

R512-60-9. Research.

(1) Children's Trust Account funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

KEY: child welfare, child abuse, children's trust account
October 22, 2009 **62A-4a-102**
Notice of Continuation January 3, 2007 **62A-4a-305**
62A-4a-309
62A-4a-310
62A-4a-311

R512. Human Services, Child and Family Services.
R512-200. Child Protective Services, Intake Services.
R512-200-1. Purpose and Authority.

(1) The purpose of Intake Services is:

(a) To receive and evaluate whether an investigation is needed;

(b) Assign for investigation referrals of suspected child abuse, neglect, and dependency.

(2) Pursuant to Section 62A-4a-105 and 62A-4a-403, Child and Family Services is authorized to provide CPS.

(3) This rule is authorized by Section 62A-4a-102.

R512-200-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "CPS" means Child Protective Services.

(c) "SAFE" means Child and Family Services' Child Welfare Management Information System.

R512-200-3. Scope of Services.

(1) Qualification for Services.

(a) Child and Family Services will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply Child and Family Services CPS workers with a complete previous Child and Family Services history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.

(2) Priority of the referral.

(a) Child and Family Services establishes CPS priority time frames as follows:

(i) A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter, Intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the Child and Family Services CPS worker. Intake shall provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a Child and Family Services CPS worker has, as a standard, three hours to initiate efforts to make face-to-face contact if the alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.

(ii) A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the Child and Family Services CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned Child and Family Services CPS worker. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.

(iii) A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a Child and Family Services CPS worker, Intake will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS, and notify law enforcement. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.

(3) If Child and Family Services received a report concerning a runaway child, Intake will gather information to determine if there is an allegation of abuse, neglect, or dependency that requires a CPS referral or will refer the caller to contact a youth services agency in accordance with Section 62A-4a-501.

(4) Out-of-State Abuse or Neglect Report.

(a) Child and Family Services will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.

(b) When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the time of the referral, the Child and Family Services CPS worker shall:

(i) Obtain all the information needed to complete a referral.

(ii) Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.

(iii) Contact the CPS agency in the state where the incident of abuse occurred and complete the referral process of that state.

(iv) Assign the referral to a Child and Family Services CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.

(v) In domestic violence related child abuse cases, recognize another state's protective order.

(vi) If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a Child and Family Services CPS worker for investigation. The Child and Family Services CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.

(5) When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:

(a) Obtain all the information needed to complete a referral.

(b) Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.

(c) If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.

(6) The Department of Health Child Care Licensing unit and/or the Department of Human Services Office of Licensing and appropriate Child and Family Services staff shall be notified by Intake when Child and Family Services receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the assigned personnel for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of Child and Family

Services, or any other Child and Family Services conflict of interest.

(7) Availability.

(a) CPS are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

October 22, 2009 62A-4a-102

Notice of Continuation August 20, 2008 62A-4a-105

R512. Human Services, Child and Family Services.
R512-204. Child Protective Services, New Caseworker Training.
R512-204-1. Purpose and Authority.

(1) Pursuant to Section 62A-4a-107, the Division of Child and Family Services (Child and Family Services) mandates that before assuming significant independent casework responsibilities, all caseworkers shall successfully complete the core curriculum training.

(2) Section 62A-4a-102 gives Child and Family Services rulemaking authority.

R512-204-2. Conflict Training.

(1) The child welfare training coordinator for Child and Family Services is charged with the responsibility for ensuring that the core curriculum is inclusive of information about working with families where there is a conflictual relationship born out of divorce proceedings. This training must include information on fraudulent reporting in Child Protective Services investigations. Other training information must be provided that assists the caseworker in using a variety of techniques to develop a complete picture of the family dynamics and how this may impact the information gathered and the conclusions reached at the end of an investigation.

KEY: child welfare, child abuse, caseworker training
October 22, 2009 **62A-4a-105**
62A-4a-107
62A-4a-102

R523. Human Services, Substance Abuse and Mental Health.
R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.
R523-23-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

(a) certification of providers;

(b) approval of the Seminar curriculum;

(c) the ongoing activities of providers; and

(d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall submit to the Division the name, last four digits of the person's social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

R523-23-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-23-6. Division Responsibilities.

The Division shall maintain the list of servers who have completed the seminar and make this information available to the public for compliance reviews.

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of classroom instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

(i) facts about alcohol;

(ii) what alcohol is; and

(iii) alcohol's path through the body.

(b) Factors influencing the effect of alcohol including:

(i) food and digestive factors;

(ii) weight, physical fitness and gender factors;

(iii) psychological factors;

(iv) tolerance; and

(v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

(ii) classification of behavioral signs; and

(iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

(i) use of classification system;

(ii) use of alcohol facts;

(iii) continuity of service; and

(iv) drink counting.

(e) Overview of state alcohol laws:

(i) Utah liquor distribution and control;

(ii) legal age;

(iii) prohibited sales;

(iv) third party liability and the Dram Shop Law;

(v) legal definition of intoxication; and

(vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

(g) Intervention techniques:

(i) slowing down service;

(ii) offering food or nonalcoholic beverages;

(iii) serving water with drinks;

(iv) not encouraging reorders; and

(v) cutting off service.

(h) Establishing house rules for regulating alcoholic beverages:

(i) management and co-workers' support; and

(ii) dealing with minors; and

(i) Alternative means of transportation and getting the customer home safely:

(i) ask customer to arrange alternative transportation;

(ii) call a taxi for transportation service;

(iii) accommodations for the night; and

(iv) telephone the police.

R523-23-8. Examination.

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(e) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-23-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-23-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

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R590. Insurance, Administration.
R590-146. Medicare Supplement Insurance Standards.
R590-146-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Section 31A-22-620 requiring the commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance.

R590-146-2. Purpose.

The purpose of this rule is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare; and to establish rating and reporting requirements.

R590-146-3. Applicability and Scope.

A. Except as otherwise specifically provided in Sections 7, 13, 14, 17 and 22, this rule shall apply to:

(1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and

(2) all certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This rule shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination, of the labor organizations.

R590-146-4. Definitions.

For purposes of this rule:

A. "Applicant" means:

(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) in the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

F. "Creditable coverage" has the same meaning as provided in Section 31A-1-301.

G. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

H. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

I. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(1) coordinated care plans which provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

L.(1) "Medicare supplement policy" means a group or individual policy of accident and health insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

(2) "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan, HCPP, that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.

M. "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to December 12, 1994.

N. "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after July 30, 1992 and with an effective date of coverage prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

O. "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010.

P. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Q. "Secretary" means the Secretary of the United States Department of Health and Human Services.

R590-146-5. Policy Definitions and Terms.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms, which conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ result language and shall not include words, that establish an accidental means test or use words such as external, violent, visible wounds, or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person

which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means, for purposes of Section 14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

R590-146-6. Policy Provisions.

A. Except for permitted preexisting condition clauses as described in Subsections 7.A.(1), 8.A.(1), and 8a.A.(1) of this rule, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

D. (1) Subject to Subsections 7.A.(4), (5) and (7) and 8.A.(4) and (5) of this rule, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan, and;

(b) Premiums are adjusted to reflect the elimination of outpatient prescription coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

R590-146-7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to July 30, 1992.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in this Subsection (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 8a.B. of this rule.

(c) If membership in a group is terminated, the issuer shall:

(i) offer the certificateholder the conversion opportunities described in Subsection (b); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

B. Minimum Benefit Standards. Every issuer shall include the following benefits:

(1) coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;

(6) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible, $100; and

(7) effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

R590-146-8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 30, 1992 and with an effective date for coverage prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection (5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which, at the option of the certificateholder:

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection (5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in

determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for the period provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(8) If an issuer makes a written offer to the Medicare supplement policyholders or certificateholders of one or more of its plans, to exchange during a specified period from his or her 1990 plan, as described in Section 9 of this rule, to a 2010 plan , as described in Section 9a of this rule, the offer and subsequent exchange shall comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured replaces a 1990 Plan policy or certificate with an issue age rated 2010 Plan policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer shall be filed with the commissioner.

(b) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

(c) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 plan policy for certificate of the insured, but may apply pre-existing condition limitations of no more than six months to any added benefits contained in the new 2010 plan policy or certificate not contained in the exchanged policy.

(d) The new policy or certificate shall be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law.

B. Standards for Basic, Core, Benefits Common to All Benefit Plans A through J.

Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans B through J only as provided by Section 9 of this rule.

(1) Medicare Part A Deductible: Coverage for all the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) 80% of the Medicare Part B Excess Charges: Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) 100% of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250

calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit.

(a) Coverage for the following preventive health services not covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from Subsection (b) and patient education to address preventive health care measures; and

(ii) preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(b) Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology, AMA CPT, codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided shall be primarily services, which assist in activities of daily living.

(ii) The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

D. Standards for Plans K and L.

(1) Standardized Medicare supplement benefit plan K shall consist of the following:

(a) coverage of 100 % of the part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection (j);

(e) skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j);

(f) hospice Care: Coverage for 50% of the cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection (j);

(g) coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j);

(h) except for coverage provided in Subsection (i) below, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j) below;

(i) coverage of 100% of the cost sharing for Medicare Part

B preventive services after the policyholder pays the Part B deductible; and

(j) coverage of 100% of all cost sharing under Medicare Part A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(a) The benefits described in Subsections D.(1)(a), (b), (c) and (i);

(b) The benefits described in Subsections D.(1) (d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Subsection D.(1)(j), but substituting $2000 for $4000.

R590-146-8a. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date of coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage prior to June 1, 2010 remain subject to the requirements of Section 9 of this rule.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from a sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection A.(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection (A)(5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24-months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90-days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90-days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90-days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (7)(b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been

suspended.

B. Standards for Basic, Core, Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M, N. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(6) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, N as provided by Section 9a.

(1) Medicare Part A Deductible: Coverage for 100% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(4) Medicare Part B Deductible: Coverage for 100% of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) One hundred percent, 100%, of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

R590-146-9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8.B. of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in Subsection 9.G. and Section 10 of this rule.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans A through L listed in this section and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 8.B. and 8.C., or 8.D. and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan A shall be limited to the basic, core, benefits common to all benefit plans, as defined in Subsection 8.B. of this rule.

(2) Standardized Medicare supplement benefit plan B shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible as defined in Subsection 8.C.(1).

(3) Standardized Medicare supplement benefit plan C shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan D shall include only the following: The core benefit, as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan E shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Subsections 8.C.(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan F shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan F deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, the

Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively. The annual high deductible plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan G shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan H shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (6) and (8) respectively. The prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(10) Standardized Medicare supplement benefit plan I shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (5), (6), (8) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(11) Standardized Medicare supplement benefit plan J shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(12) Standardized Medicare supplement benefit high deductible plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan J deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(F) Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, MMA.

(1) Standardized Medicare supplement benefit plan K shall consist of only those benefits described in Subsection 8.D.(1).

(2) Standardized Medicare supplement benefit plan L shall consist of only those benefits described in Subsection 8.D.(2).

(G) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

R590-146-9a. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates with an effective date of coverage before June 1, 2010 remain subject to the requirements of Sections 8a and 9 of this rule.

A.(1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8a.B. of this rule.

(2) If an issuer makes available any of the additional benefits described in Subsection 8a.C., or offers standardized benefit Plan K or L, as described in Subsections 9a.E.(8) and (9) of this rule, then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic core benefits as described in Subsection (1), a policy form or certificate form containing either standardized benefit Plan C, as described in Subsection 9a.E.(3) of this rule, or standardized benefit Plan F, as described in Subsection 9a.E.(5) of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this Subsection shall be offered for sale in this state, except as may be permitted in Subsection 9a.F. and in Section 10 of this rule.

C. Benefit plan shall be uniform in structure, language, designation and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provide in Subsections 8a.B. and C. of this rule; or, in the case of plans K or L, in Subsections 9a.E.(8) or (9) of this rule and list the benefits in the order shown. For purposes of this subsection, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. In addition to the benefit plan designations required in Subsection C, an issuer may use other designations to the extent permitted by law.

E. Make-up of 2010 Standardized Benefit Plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: The basic core benefits as defined in Subsection 8a.B. of this rule.

(2) Standardized Medicare supplement benefit Plan B shall include only the following: the basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible as defined in Subsection 8a.C.(1) of this rule.

(3) Standardized Medicare supplement benefit Plan C shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), and (6) of this rule, respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), and (6) of this rule, respectively.

(5) Standardized Medicare supplement benefit Plan F shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(6) Standardized Medicare supplement benefit Plan F With High Deductible shall include only the following: 100% of covered expenses following the payment of the annual deductible set forth in Subsection (b).

(a) The basic core benefit as defined in Subsection 8a.B. of this rule, 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(b) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(7) Standardized Medicare supplement benefit Plan G shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (5), and (6) of this rule, respectively.

(8) Standardized Medicare supplement benefit Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(a) Part A Hospital Coinsurance 61st through 90th days: Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period:

(b) Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period:

(c) Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance:

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection (j):

(e) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j):

(f) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection(j):

(g) Blood: Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j):

(h) Part B Cost Sharing: Except for coverage provided in Subsection (i), coverage of 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j):

(i) Part B Preventive Services: Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Cost Sharing After Out-of-Pocket Limits: Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(9) Standardized Medicare supplement benefit Plan L is mandated by The Medicare Prescription Drug Improvement and Modernization Act of 2003, and shall include only the following:

(a) The benefits described in Subsections (8)(a), (b), (c) and (i);

(b) The benefit described in Subsections (8)(d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Subsection (8)(j), but substituting $2000 for $4000.

(10) Standardized Medicare supplement benefit Plan M shall include only the following:

The basic core benefit as defined in Subsection 8a.B. of this rule, plus 50% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign county as defined in Subsections 8a.C.(2), (3) and (6) of this rule, respectively.

(11) Standardized Medicare supplement benefit Plan N shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3) and (6) of this rule, respectively, with copayments in the following amounts;

(a) the lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

(b) the lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

F. New or Innovative Benefits. An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

R590-146-10. Medicare Select Policies and Certificates.

A.(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act, OBRA, of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this rule.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(b) the number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals;

(c) there are written agreements with network providers describing specific responsibilities;

(d) emergency care is available 24 hours per day and seven days per week; and

(e) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subsection shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate;

(2) a statement or map providing a clear description of the service area;

(3) a description of the grievance procedure to be utilized;

(4) a description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted;

(5) a list and description, by specialty, of the network providers;

(6) copies of the written information proposed to be used by the issuer to comply with Subsection I; and

(7) any other information requested by the commissioner.

F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes.

(2) Any changes to the list of network providers shall be filed with the commissioner within 30 days of the change. The submission must include all network providers and clearly identify the new and discontinued providers.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) it is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates;

(2) a description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;

(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(5) a description of limitations on referrals to restricted network providers and to other providers;

(6) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than March 31 of each calendar year to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

R590-146-11. Open Enrollment.

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this section without regard to age.

B.(1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

C. Except as provided in Subsection B and Sections 12 and 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

R590-146-12. Guaranteed Issue for Eligible Persons.

A. Guaranteed Issue.

(1) Eligible persons are those individuals described in Subsection B who seek to enroll under the policy during the period specified in Subsection C, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection E that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons.

An eligible person is an individual described in any of the following subsections:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a program of All-Inclusive Care for the Elderly, PACE, provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) the certification of the organization or plan has been terminated;

(b) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, or the plan is terminated for all individuals within a residence area;

(d) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) the organization, or producer or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) the individual meets such other exceptional conditions as the Secretary may provide.

(3)(a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost;

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, health care prepayment plan; or

(iv) an organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage in Subsection 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or a producer or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost, any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(b) The subsequent enrollment under Subsection (a) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act; or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare, enrolls in a Medicare Advantage plan under part C of Medicare, or in a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection E(4).

(8) The individual is enrolled under medical assistance under Title XIX of the Social Security Act, Medicaid, and is involuntarily terminated outside of requirements of Subsections 8.A.(7)(a) and (b).

C. Guaranteed Issue Time Periods.

(1) In the case of an individual described in Subsection B(1), the guaranteed issue period begins on the later of:

(a) the date the individual receives a notice of termination or cessation of all supplemental health benefits or, if a noticed is not received, noticed that a claim has been denied because of a termination or cessation; or

(b) the date that the applicable coverage terminates or ceases; and ends sixty-three days thereafter;

(2) In case of an individual described in Subsections B(2), (3), (5) or (6), whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date applicable coverage is terminated;

(3) In the case of an individual described in Subsection B(4)(a), the guaranteed issue period begins on the earlier of:

(a) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(b) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(4) In case of an individual described in Subsections B(2), (4)(b) and (c), (5) or (6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the day that is sixty-three days after the effective date;

(5) In the case of an individual described in Subsection

B(7), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period ends on the date that is sixty-three days after the effective date of the individual's coverage under Medicare Part D; and

(6) In case of an individual described in Subsection B but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on that date that is sixty-three days after the effective date.

D. Extended Medigap Access for Interrupted Trial Periods

(1) In the case of an individual described in Subsection B(5), or deemed to be so described, pursuant to this subsection, whose enrollment with an organization or provider described in Subsection B(5)(a) is involuntarily terminated within the first twelve-months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(5);

(2) In the case of an individual described in Subsection B(6), or deemed to be so described, pursuant to this subsection, whose enrollment with a plan or in a program described in Subsection B(6) is involuntarily terminated within the first twelve-months of enrollment, and who, without an intervening enrollments, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(6).

(3) For the purposes of Subsections B(5) and (6), no enrollment of an individual with an organization or provider described in Subsection B(5)(a), or with a plan or in a program described in Subsection B(6), may be deemed to be an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to Which Eligible Persons are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsections B(1), (2), (3), (4), and (8) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K or L offered by any issuer.

(2)(a) Subject to Subsection (b), Subsection B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection (1);

(b) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with a outpatient prescription drug benefit, a Medicare supplement policy described in this subsection is:

(i) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(ii) at the election of the policyholder, an A, B, C, F, including F with a high deductible, K or L policy that is offered by any issuer;

(3) Subsection B(6) shall include any Medicare supplement policy offered by any issuer;

(4) Subsection B(7) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

F. Notification provisions.

(1) At the time of an event described in Subsection B because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

R590-146-13. Standards for Claims Payment.

A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act, as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

R590-146-14. Loss Ratio Standards and Refund or Credit of Premium.

A. Loss Ratio Standards.

(1)(a) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) at least 75% of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65% of the aggregate amount of premiums earned in the case of individual policies.

(b) The loss ratio shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) home office and overhead costs;

(ii) advertising costs;

(iii) commissions and other acquisition costs;
(iv) taxes;
(v) capital costs;
(vi) administration costs; and
(vii) claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards, and comply with the requirements of R590-85.

(3) For purposes of applying Subsections (1) and 15.D.(3) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising, including both print and broadcast advertising, shall be deemed to be individual policies.

(4) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) when combined with actual experience beginning with the effective date of October 31, 1994 as set forth in Bulletin 94-8; and

(c) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

B. Refund or Credit Calculation.

(1) An issuer shall collect and file with the commissioner by May 31 of each year each applicable form;

(a) Medicare Supplement Refund Calculation;

(b) Calculation of Benchmark Ratio Since Inception for Group Policies; and

(c) Calculation of the Benchmark Ratio Since Inception For Individual Policies.

(2) If on the basis of the experience as reported the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation, is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after the effective date of this rule. The first report shall be due by May 31 each year.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Filing of Premium Rates.

(1) Annual Filing of Premium Rates Report.

(a) An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 30, 1992 in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three years.

(b) The Annual Filing of Premium Rates Report shall be filed no later than May 31 each year, and in compliance with R590-220.

(2)(a) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state, appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 30, 1996 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

R590-146-15. Filing of Policies, Certificates, and Premium Rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed for use in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

C. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed

for acceptance in accordance with the filing requirements and procedures prescribed by the commissioner, and Rule R590-85.

D.(1) Except as provided in Subsection (2) an issuer shall not file more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) the inclusion of new or innovative benefits;

(b) the addition of either direct response or producer marketing methods;

(c) the addition of either guaranteed issue or underwritten coverage;

(d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

E.(1) Except as provided in Subsection (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection (a) shall not file a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Subsection (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential, which is in the public interest.

F.(1) Except as provided in Subsection (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule R590-146-14.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

R590-146-16. Permitted Compensation Arrangements.

A. An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for no fewer than five renewal years.

C. No issuer or other entity may provide compensation to its producers and no producer may receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finder's fees.

R590-146-17. Required Disclosure Provisions.

A. General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate section of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners

and the Centers for Medicare and Medicaid Services, CMS, in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements.

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(b) inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. MMA Notice Requirements.

Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

D. Outline of Coverage Requirements for Medicare Supplement Policies.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant.

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12-point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The Outline of Medicare Supplement Coverage, from the National Association of Insurance Commissioners, dated 1998, as incorporated by reference herein, is available for public inspection at the Insurance Department.

E. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq.; a disability income policy; or other policy identified in Subsection 3B of this rule; issued for delivery in this state to persons eligible for Medicare, shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Subsection 25.E., the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

R590-146-18. Requirements for Application Forms and Replacement Coverage.

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements may be used.

TABLE I

(Statements)
(Boldface Type)

(1) You do not need more than one Medicare supplement policy.
(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be

reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary(SLMB).

Questions
(Boldface Type)

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with the application. PLEASE ANSWER ALL QUESTIONS.
(Please mark Yes or No below with an "X")
To the best of your knowledge,
(1)(a) Did you turn age 65 in the last 6 months?
Yes No
(b) Did you enroll in Medicare Part B in the last 6 months?
Yes No
(c) If yes, what is the effective date?
(2) Are you covered for medical assistance through the state Medicaid program?
(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost", please answer NO to
this question.)
YES NO
(a) Will Medicaid pay your premiums for this Medicare supplement
policy?
YES NO
(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?
YES NO
(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days, for example, a Medicare Advantage plan, or a Medicare HMO or PPO, fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.
START / / END / /
(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?
YES NO
(c) Was this your first time in this type of Medicare plan?
YES NO
(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?
YES NO
(4)(a) Do you have another Medicare supplement policy in force?
YES NO
(b) If so, with what company, and what plan do you have (optional for Direct Mailers)?
.....
(c) If so, do you intend to replace your current Medicare supplement policy with this policy?
YES NO
(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)
YES NO
(a) If so, with what company and what kind of policy?
.....
.....
.....
.....
(b) What are your dates of coverage under the other policy? If you are still covered under the other policy, leave "END" blank.
START / / END / /

B. Producers shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five years, which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the producer, except where the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than 12-point type:

TABLE II
NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
OR MEDICARE ADVANTAGE

(Boldface Type)
(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.
(Boldface Type)

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance or Medicare Advantage and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage.

You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.
STATEMENT TO APPLICANT BY ISSUER, PRODUCER (BROKER OR OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):
..... Additional benefits.
..... No change in benefits, but lower premiums.
..... Fewer benefits and lower premiums.
..... My plan has outpatient prescription drug coverage and I am enrolling in Part D.
..... Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. (optional only for Direct Mailer.)
..... Other. (please specify)

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage)

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for similar benefits to the extent such time was spent
(depleted) under the original policy.

  3.  If, you still wish to terminate your present policy
and replace it with new coverage, be certain to truthfully
and completely answer all questions on the application
concerning your medical and health history.  Failure to
include all material medical information on an application
may provide a basis for the company to deny any future
claims and to refund your premium as though your policy
had never been in force.  After the application has been
completed and before you sign it, review it carefully to
be certain that all information has been properly recorded.
(If the policy or certificate is guaranteed issue, this
paragraph need not appear.)

Do not cancel your present policy until you have received
your new policy and are sure that you want to keep it.

..................................................
(Signature of Producer, Broker or Other Representative)

(Typed Name and Address of Issuer, Producer or Broker)

..................................................
(Applicant's Signature)
..................................................
(Date)

Signature not required for direct response sales.
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F. Subsections 1 and 2 of the replacement notice, applicable to preexisting conditions, may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

R590-146-19. Filing Requirements for Advertising.

An issuer shall, upon specific request from the commissioner, file for use a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, electronic, or television medium.

R590-146-20. Standards for Marketing.

A. An issuer, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued.

(3) display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses"

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and

(5) establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in Section 31A-23-302, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this rule.

R590-146-21. Appropriateness of Recommended Purchase and Excessive Insurance.

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

R590-146-22. Reporting of Multiple Policies.

A. On or before May 31 of each year, an issuer shall file the report form under Subsection 25.D. for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) policy and certificate number; and

(2) date of issuance.

B. The items set forth above shall be grouped by individual policyholder.

R590-146-23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

R590-146-24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

This section applies to all policies with policy years beginning on or after May 21, 2009.

A. An issuer of a Medicare supplement policy or certificate:

(1) shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

(2) shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates)of an individual on the basis of the genetic information with respect to such individual.

B. Nothing in Subsection A shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

(1) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a

group based on the manifestation of a disease or disorder of an insured or applicant; or

(2) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

C. An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Subsection C shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996 as may be revised from time to time) and consistent with Subsection A.

E. For purposes of carrying out Subsection D, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

F. Notwithstanding Subsection C, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(2) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(a) compliance with the request is voluntary; and

(b) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(3) No genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(4) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(5) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this subsection.

G. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

H. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

I. If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection H if such request, requirement, or purchase is not in violation of Subsection G.

J. For the purposes of this section only:

(1) "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(3) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual, who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(4) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(6) "Underwriting purposes" means,

(a) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(b) the computation of premium or contribution amounts under the policy;

(c) the application of any pre-existing condition exclusion under the policy; and

(d) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

R590-146-25. Documents Incorporated by Reference.

The following filing documents are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department or at www.insurance.utah.gov. These forms were adopted by the National Association of Insurance Commissioners' Model Regulation number 651, as approved October 2008:

A. "MEDICARE SUPPLEMENT REFUND CALCULATION FORM;"

B. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES;"

C. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES;"

D. "FORM FOR REPORTING MEDICARE SUPPLEMENT POLICIES;"

E. "DISCLOSURE STATEMENTS;" and

F. "OUTLINE OF MEDICARE SUPPLEMENT COVERAGE."

R590-146-26. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-146-27. Enforcement Date.

The commissioner will begin enforcing the provisions of

this rule 45 days from the effective date of the rule.

R590-146-28. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
September 15, 2009 31A-22-620
Notice of Continuation April 16, 2007

R590. Insurance, Administration.
R590-171. Surplus Lines Procedures Rule.
R590-171-1. Authority.

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

R590-171-2. Purpose and Scope.

A. The purpose of this rule is:

(1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines producers;

(2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;

(3) to authorize The Surplus Line Association to collect a stamping fee;

(4) to require that each person licensed as a surplus lines producer in Utah be a member of the advisory organization;

(5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and

(6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

R590-171-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-88.

C. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(a)(viii) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

D. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.

E. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

R590-171-4. Surplus Line Association of Utah.

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines producer in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

(1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;

(2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);

(3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with Sections R590-171-6 and 7 of this rule; and

(4) to collect the stamping fee prescribed by Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

(a) the current marketplace;

(b) information from the Surplus Line Association Board of Directors;

(c) information from admitted and surplus lines insurers doing business in Utah;

(d) information from other sources, including producers and consumers; and

(e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers. Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

C. Substantial insureds may purchase insurance from surplus lines insurers pursuant to Section 31A-15-103 if each of the following conditions is met:

(1) the insured procures the insurance for its risk exposures by use of an employee of the insured whose full time responsibilities and duties consist of purchasing insurance and risk management;

(2) the insurance procured for property and casualty

coverages, excluding workers' compensation insurance, exceeds an annual aggregate premium of $500,000; and

(3) the insured's risk manager and an officer of the company sign an affidavit confirming items (1) and (2). This affidavit shall be retained by the surplus lines producer and one copy shall be attached to the submission documentation required under R590-171-8.

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines producers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23a-501, a surplus lines producer may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines producer may compensate the originating producer involved in the transaction.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer. An explanation must be provided in the submission documentation outlined in R590-171-8.

R590-171-8. Reporting and Examination.

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines producer must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed with the Surplus Lines Association of Utah.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines producer and instruct all surplus lines producers as to its scope and operation.

R590-171-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-171-11. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this rule.

R590-171-12. Severability.

If a provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

September 28, 2009	**31A-2-201**
Notice of Continuation June 14, 2005	**31A-15-103**
	31A-15-111

R590. Insurance, Administration.
R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.
R590-194-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah which contain major medical benefits.

(2) This rules does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment(DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declare to be severable.

KEY: insurance law
December 1, 1999 31A-2-201
Notice of Continuation October 8, 2009 31A-22-614.5
31A-22-623

R590. Insurance, Administration.
R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.
R590-196-1. Purpose.

This rule establishes uniform fee and collateral standards for bail bond surety business in the State of Utah.

R590-196-2. Authority.

This rule is promulgated pursuant to Section 31A-35-104 which requires the commissioner to adopt by rule standards of conduct for bail bond surety business.

R590-196-3. Scope and Applicability.

This rule applies to any person engaged in bail bond surety business.

R590-196-4. Fee Standards.

(1) Initial bail bond fees.

(a) Bail bond premium:

(i) minimum fee: none;

(ii) maximum fee: not to exceed 20% of bond amount.

(b) Document preparation fee may not exceed $20 per set of forms pertaining to one bail bond.

(c) Credit card fee may not exceed 5% of the amount charged to the credit card.

(2) Additional fees.

(a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:

(i) the defendant fails to appear before the court at any designated dates and times;

(ii) the defendant fails to comply with the court order; or

(iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.

(b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.

(c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.

(d) Reasonable collateral expense fees:

(i) actual expenses to obtain collateral; and

(ii) storage expenses if in a secured storage area, limited to actual expenses.

(e) A late payment fee of $20 or 5% of the delinquent periodic payment whichever is less.

(f) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

R590-196-5. Collateral Standards.

(1) Collateral may be provided to secure bail bond fees, the face amount of the bail bond issued, or both.

(2) If the bail bond surety accepts the same collateral to secure the bail bond fees and the face amount of the bail bond issued, then, in the event of a failure to pay bail bond fees when due, the collateral may not be converted until the bail bond is exonerated or judgment entered against the surety and the depositor has been given no less than 15 days to pay any bond fees owing.

(3) If the bail bond surety accepts different collateral to secure the bail bond fee and the face amount of the bail bond issued then:

(i) the collateral securing the bail bond fees may not be converted until payment has been defaulted under the terms of the promissory note for those fees, and the depositor of the collateral has been given no less than 15 days to make the required payment;

(ii) the collateral securing the face amount of the bail bond issued may not be converted until the bond is exonerated or judgment entered against the surety and the depositor of the collateral has been given no less than 15 days to reimburse the bail bond surety for any amounts owed to the bail bond surety.

(4) The bail bond surety, its agents taking possession of collateral, or both, will hold said collateral as a fiduciary until such time as ownership of the collateral passes to the bail bond surety.

(5) Collateral held as a fiduciary may not be used by the bail bond surety or its agents without the specific written permission of the depositor of the collateral.

(6) Should proceeds from converted collateral exceed the outstanding balance due, the bail bond surety will return the excess to the depositor of the collateral.

(7) Notice under the rule shall be deemed proper if it is sent via first class mail to the address provided by the depositor of the collateral.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

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XYZ Bail Bonds Disclosure Form
1234 South 1234 East, Salt Lake City, UT 84444:
801-123-4567 fax: 801-098-7654
Defendant.....Co-Signer.....
Court.....Charge.....
Bond amount $.....Bond number.....
Initial Fees, non-refundable.
....bond premium, maximum: no more than 20%;
    minimum: none.                                  $......
....document preparation, not to exceed $20
    per set of bond forms.                          $......
....credit card fee, not to exceed 5% of amount
    charged to credit card                          $......
                                 total initial fees  $......

Additional Fees.
     (1)  Limited to actual and reasonable expenses required
because the defendant fails to appear before the court at any
designated times, or fails to comply with the court order, or
fails to comply with the terms of the bail bond agreement or
any promissory notes pertaining to that agreement.  The following
are some reasonable expense fees:
     (i)  reasonable expense fee for mileage is IRS mileage
reimbursement standard for business miles;
     (ii)  reasonable apprehension expense fees include
meals at mid-range restaurants, lodging at mid-range hotels,
transportation at no more than coach fares; and
     (iii)  reasonable collateral expense fees: actual
expenses to obtain collateral and, actual storage expenses,
if collateral is in a secured storage area.
     (2)  A late payment fee of $20 or 5% of the
delinquent periodic payment whichever is less.
     (3)  If a fee is charged by the court or the jail to
process a bail bond, the actual fee charged may be passed
through to the defendant or the co-signer.

Grounds for revocation of bond.
     Should the defendant violate any of the following, the
defendant shall be subject to immediate bond revocation and
the defendant, or the co-signer, or both, shall be subjectto all
the costs incurred to return the defendant to the court.

Grounds for revocation include the following:
     (a)  the defendant or co-signer providing materially false
information on bail bond application;
     (b)  the court's increasing the amount of bail beyond sound
underwriting criteria employed by the bail bond agent or bail
bond surety;
     (c)  a material and detrimental change in the collateral
posted by the defendant or one acting on defendant's behalf;
     (d)  the defendant changes their address or telephone
number or employer without giving reasonable notice to the bail
bond agent or bail bond surety;
     (e)  the defendant is arrested for another crime, other
than a minor traffic violation, while on bail;
     (f)  the defendant is back in jail in any jurisdiction and
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revocations can be served prior to the defendant being released;
(g) failure by the defendant to appear in court at any appointed times;
(h) finding of guilt against the defendant by a court of competent jurisdiction;
(i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.
The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:
.....
.....
.....
The following has been given as collateral to guarantee payment of bond fees:
.....
.....
In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

R590-196-7. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-196-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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 and the provisions of this rule are declared to be severable.

R590-196-9. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

KEY: insurance
October 22, 2009 31A-35-104
Notice of Continuation January 7, 2005

R651. Natural Resources, Parks and Recreation.
R651-202. Boating Advisory Council.
R651-202-1. Boating Advisory Council.

A Boating Advisory Council, consisting of nine members, has been appointed by the board to represent boaters and others in boating matters. There is one member from each of the following interests: Boating safety and education organizations, sailing users, boating anglers, marine dealers, personal watercraft users, outfitting companies, paddle craft users, water sports users and motorboat users.

KEY: boating
October 27, 2009 73-18-3.5
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-700. Administrative Procedures for Real Property Management.
R651-700-1. Authority.

These rules establish administrative procedures for real property under the management and/or ownership of the State of Utah, Division of Parks and Recreation ("State Parks") real property, as set forth in Utah Code Ann. Title 79, Chapter 4. State Parks, through the Parks Board, may establish rules for the acquisition, planning, protection, operation, maintenance, development, and wide use of scenic beauty, recreation utility, historic, archeological, or scientific interest, to the end that the health, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

R651-700-2. Purpose.

These rules are intended:

(1) To establish standards and procedures for acquisition, disposal, and exchange of Division lands consistent with law of the State of Utah.

(2) To provide procedure for granting of rights-of-way, easements and special use permits, and other non-recreational use of Division lands.

(3) To ensure consistency and efficiency of land management in order to maximize benefits to the Division and provide accountability to the citizens of Utah.

(4) To protect real property assets, which are fixed assets of the State of Utah, in compliance with applicable laws, rules and policies.

R651-700-3. Application.

These rules are applicable statewide for real property transactions but they shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R651-700-4. Definitions As Used in This Section.

(1) "Applicant" means any person applying for a Right-Of-Way (ROW), Easement, Lease, Special Use Lease, and Special Use Permit.

(2) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.

(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Authorized Area" is the area of Division-owned land, which the Division allows a development to occupy, or person to use through a ROW, Easement, Lease , Special Use Lease, and Special Use Permit.

(5) "Board of Parks and Recreation" is the policy making body of the Division of State Parks and Recreation.

(6) "Communications Facility" means towers, antennas, dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over of under State Parks to serve a communications facility shall be governed by the administrative rules for granting Easements as set forth in R651-700.

(7) "Department" means the Department of Natural Resources.

(8) "Development" means any structure built on State Parks land.

(9) "Director" is the agency head of the Division in whom ultimate legal authority is vested or their designee.

(10) "Division" is the Division of Parks and Recreation, also referred to as "State Parks", Division and State Parks may be used interchangeably, as appropriate.

(11) "Division Land" is land owned and/or managed by the Division or its agents.

(12) "Easement" means an interest in land owned by another party, entitling the holder of said interest to limited use of enjoyment of the others land.

(13) "Executive Director" means the executive Director of the Utah Department of Natural Resources.

(14) "Fair Market Rental Value" is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.

(15) "Lands and Environmental Coordinator" is the Division employee responsible for real property planning, documentation, analysis, reports, agreements, databases, and coordination.

(16) "Lease" means an agreement that authorizes use of real property for a specific term and purpose, under specified conditions for a fee.

(17) "Paleontological Resources" means the remains or traces of organisms, plant or animal, which have been preserved by various means.

(18) "Park Manger" is the management official for one or more state parks.

(19) "Rights-of-Way (ROW) means the right or privilege, acquired through contract or other legally accepted means, to pass over a designated portion of the property of another.

(20) "Real Property" is land under water, upland, and all other property commonly or legally defined as real property (as set forth in Utah Code Ann. Section 79-4-203).

(21) "Real Property Asset" means the land surface, air above, and ground below, including all appurtenances to the land including buildings, structures, fixtures, fences and improvements erected on or attached to the same. Real property assets include any and all the interests, benefits, and rights inherent in the ownership of real estate.

(22) "Region" means a geographical grouping of state parks for management purposes. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(23) "Region Manager" is a manager of a geographic assemblage of state parks. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(24) "Resource Management Plan" is a plan prepared for the current and future management of a state park or recreational resource such as trails, boating safety, or off-highway vehicles.

(25) "Special Use Lease" is a written authorization issued by the Division to a person to use a specific area of Division Land for a special use under specific terms and conditions for a term of one (1) to fifteen (15) years.

(26) "State Park" means unique areas or real property in Utah set aside by the Utah State Government to preserve scenic beauty, recreational utility, historic, archeological, or scientific interest, to the end that the healthy, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

(27) "Special Use Permit" means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time-certain physical access o Division Lands. This contract vehicle is of a lesser order than a lease or Easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(28) "Structure" means anything placed, constructed, or erected on Division Land.

R651-700-5. Obtaining an Opinion of Value.

(1) When acquiring, exchanging, or selling Division Lands the Division may determine the value of real property utilizing any or all of the following methods:

(a) Broker's Estimate:

(b) Market Analysis, including but not limited to an appraisal, broker's estimate, market conditions analysis, and market demand analysis; and

(c) Appraisal.

(2) An Appraisal, Broker's Estimate, or Market Analysis may not be required if:

(a) Transactions involve water rights;

(b) Transactions involve federal lands or federal funding, where federal guidelines take precedence over the provisions of this rule;

(c) The market value of the subject property interest is less than One-Hundred Thousand Dollars ($100,000), as estimated by the Division;

(d) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(e) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;

(f) An appraisal has been conducted on the subject property interest within the past twelve months;

(g) The subject property interest is being conveyed through an auction;

(h) The real property interest is a gift, contribution, or donation to the Division; or

(i) The real property interest is less-than-fee interest or not perpetual; or

(j) When the Director has determined by a written finding, that the cost of obtaining the appraisal is not justified, or in the best interest of the State of Utah.

(3) When values other than market value are considered in addition to or in place of an appraisal; or are considered in addition to, or in place of, an opinion of value rendered by a broker or sales agent; the Division shall create and keep a memo-to-file describing the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange.

R651-700-6. Land Acquisition.

(1) The Division may acquire real property through any and all legal means in order to fulfill its mission and legislative mandate.

(2) Acquisition of real property may be made by all legal and proper ;means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the Director, Executive Director and the Governor of the State of Utah.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Eminent domain acquisition shall be in the manner authorized by Utah Code Ann. Title 78, Chapter 34 et seq.

(5) The Division shall prepare an analysis of the proposed acquisition that provides the Director with the benefits of the acquisition to the Division, including an opinion as to whether or not the Division is the appropriate manager of the resource to be acquired.

(6) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(7) The Division shall make every effort to acquire subsurface mineral, water and any other rights attached to the land.

(8) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(9) Pursuant to Utah Code Ann Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(10) Proposed purchases of real property, or donations of such, shall be inspected on-site by a team consisting of the local park manager, region manager, Lands and Environmental Coordinator and others as designated by the Director.

(11) When acquiring lands the Division may determine the value of real property according to the policies contained in R651-799-5.

(12) A title report and/or land survey may be performed on all land acquisitions, at the discretion of the Director.

(13) After receiving the preliminary title report the Lands and Environmental Coordinator may request a review by the Attorney General's office.

(14) The closing of a real property transaction may be conducted at a title company. If a title company is used for closing, the Division shall instruct the company to record the deed, and after recording, send it to the Lands and Environmental Coordinator.

R651-700-7. Disposal of Real Property.

(1) The Division may dispose of real property in order to fulfill its mission and legislative mandate.

(2) Unless otherwise directed by the legislature, all land disposals shall be brought before the Parks Board for consultation, and shall have the final approval of the Director.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed sell as required by Utah Code Section 9-8-404.

(5) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(6) When selling real property the Division may determine a minimum selling price according to the policies contained in R651-700-5.

(7) Prior to completion of sale, lessees and permitees shall be notified an leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(8) The Division may sell real property to the public, upon approval of the Parks Board, through a competitive bid process to achieve the Division's goals.

(a) The Division may announce the sale of real property to the public by commercially feasible methods, to include publication in one or more newspapers of general circulation in the county in which the sale is proposed, at least 30 days or more in advance of the deadline for bid submittals.

(b) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information, which may create interest in the sell. The Division shall also identify the desired form of compensation, whether monetary, in-kind or both.

(c) Sealed bids shall be accepted no sooner than 14 days following the first sale notice. Competing bids shall be evaluated and the highest bid selected unless the highest bid

does not meet the minimum value. In the case of a tie bid, the highest bidders shall be offered the opportunity to participate in an oral bidding process.

(d) Once a successful bidder has been determined, a certificate of sale shall be prepared by the Lands and Environmental Coordinator and reviewed by the Assistant Attorney General assigned to represent the Division. A title company may provide the final closing arrangements, at the cost of the purchaser.

(e) The successful bidder shall pay the remaining balance at the time of closing and shall be responsible for all closing costs.

(f) When there are no successful bidders on the property, the unsold parcels may be:

(i) Listed with a realtor

(ii) Offer the property on a "first-come first-served" basis for a period of up to three years following the bid opening date; or

(iii) Auction the property.

R651-700-8. Land Exchanges.

(1) The Division may exchange real property in order to fulfill its mission and legislative mandate.

(2) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property through exchange, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(5) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed exchange as required by Utah Code Section 9-8-404.

(6) Prior to completion of exchanges, lessees and permitees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(7) When exchanging lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(8) The criteria for exchange proposals are evaluated as follows:

(a) Real property owned by the Division may be exchanged for private and/or public properties of equal or greater recreation or monetary value in both acreage and monetary worth if the exchange shall benefit the Division's park system. The Division may exchange real property for other assets if the exchange benefits the park system.

(b) Verification shall be made that the exchange shall not result in an unmanageable and/or uneconomical parcel of Division Land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

(c) Proposed exchanges of real property shall be inspected on-site by a team consisting of the local Park Manager, Region Manager, Lands and Environmental Coordinator and others as designated by the Director.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(f) The Division, at is discretion, may at any time cancel any and all negotiations for a land exchange.

(9) If the Division is offered a land exchange, an application shall be filed with the Division, and evaluated by the Division with the follow additional criteria:

(a) A completed application form shall be submitted with an application-processing fee established by the Division.

(b) Incomplete applications may be denied and the application fee forfeited to the Division.

The Applicant shall provide a property description, preferably a metes and bounds survey, a county plat map of all properties to be considered for the exchange. A map shall be provided indicating the relationship of the properties to Division Land.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(f) Upon receipt of an exchange application, the Division may solicit competing exchange property or assets. Competing applications may be solicited through publication, at least once a week for three consecutive weeks, in one or more newspapers of general circulation in the county in which the park is located. The Division may allow all applicants at least 20 days from the date of mailing of notice to submit a sealed bid containing their proposal for the subject parcel.

(g) The Director may approve or disapprove any exchanges based on information solicited through the application process. The Director may also waive the application for good cause.

(h) If competing proposals are received, the Division shall choose the successful applicant by evaluating each proposal for its contribution toward attainment of Division management objectives.

(i) The successful applicant may be charged an amount equal to all appraisal, appraisal reviews, advertisement, staff time, and other costs to the Division. The Director, for good cause shown by the applicant, may waive such costs.

R651-700-9. Right-Of-Way (ROW), Easements, Special Use Leases, and/or Special Use Permit.

(1) The Division may enter into real property transactions in order to fulfill its mission and legislative mandate.

(2) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(3) Potential applicants for ROW, Easements, Special Use Lease, Special Use Permit may contact the park manager or regional manager prior to making a formal application to the Lands and Environmental Coordinator.

(4) To apply for a ROW, Easement, Special Use Lease a person shall:

(a) Complete and submit an application provided by the Division to the Lands and Environmental Coordinator, unless it is an application for a Special Use Permit, in which case it shall be submitted to the appropriate park manager;

(b) Pay a non-refundable application fee;

(c) If for the purpose of construction or occupancy, submit the application and application fee at least 120 days prior to the proposed construction or occupancy date, unless otherwise specified by rule;

(d) Provide a map, aerial photograph, or other guide to the project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(e) Anyone desiring to perform a survey on Division Land with the intent of filing an application for an ROW, Easement or Special Use Lease shall prior to entry for surveying activities, file with the agency an application for a Special Use Permit. The permit shall include a description of the proposed survey project, including the purpose, general location, and potential resource disturbances of the proposed survey. The appropriate park manager or his delegate shall review the application.

(f) Provide evidence of an ownership or leasehold interest in the estate where development of that estate is the purpose for applicants seeking a ROW or Easement.

(g) Include a project plan with the following information:

(i) Project alternatives, including alternatives not affecting the Division;

(ii) Project alternatives not affecting Division Land which were considered but rejected, and the specific reasons those alternatives were rejected;

(iii) A description of the proposed activity, structures, and/or infrastructure, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. the description shall be sufficiently detailed as to provide an accurate and complete representation of the proposed actions;

(iv) Identification of adverse impacts to public recreation and scenic values associated with the proposed use and how they shall be avoided, minimized, or mitigated;

(v) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(5) Upon receiving the application, application fee, and the information required in Subsection (4) above, the Lands and Environmental Coordinator may either deny the application or grant a conditional approval within 60 days.

(6) If the application is denied, the Lands and Environmental Coordinator shall provide a written notice to the applicant.

(7) Before final approval is granted the Division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed ROW and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the Easement, ROW or Special Use Lease Area that is compatible with, and requires no editing fork accurate downloading into geographic systems information software used by the Division.

(c) Evidence that the applicant had given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) An impact assessment analyzing the potential direct, indirect, and cumulative effects the proposed project may have on public recreation opportunities, scenic values, wildlife, and wildlife habitat.

(e) A survey of threatened, endangered and candidate plant and animal species. Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

(h) A survey of the project to determine if wetlands shall be impacted. The project applicant is responsible for obtaining all federal Clean Water Act Section 404 permits. If wetlands are found, the applicant must provide sufficient mitigation to offset any damage to the wetland area.

R651-700-10. Division Assessment of the Applications for ROWs, Easements, and Special Use Leases.

(1) Upon receipt of an application for a ROW, Easement or Special Use Lease, the Division shall determine;

(a) If the application is complete;

(b) If the subject area is available for the requested use; and

(c) The method to be used to determine the amount of compensation payable to the Division.

(2) The Division shall then advise the applicant of its determination concerning each of the three factors in Section (1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible shall be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days for the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.

(4) The Division may reject applications for ROWs or Easements that would be more appropriately authorized by a Special Use Lease.

(5) Upon acceptance by the Division, the application may be circulated to various local, state, and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permitees, and Easement holders for review and comment. As part of this review, the Division shall specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species) And archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with other local, state, and federal laws and rules;

(c) Conformance of the proposed use with a state park comprehensive land use plan, resource management plan, operation plan, business plan, and/or zoning ordinances;

(d) Conformance with existing state park rules, policies, and guidelines;

(e) Potential conflicts of the proposed use with existing leases, permits or Easement holders.

(6) If the application is for a communications facility, the Division may request comments from the Federal Communications Commission, Public Utility Commission, and any other person's owning/leasing communications facilities that advise the Division that they w3an to receive such applications.

(7) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:

(a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(i) State or federal listed threatened and endangered species (including candidate species) within the requested area;

(ii) Archeological and historic resources within the requested area; and/or

(iii) Wetlands.

(c) In the case of a Special Use Lease, if the area requested for lease will be authorized for use by the applicant through a Special Use Lease, or be made available to the public through competitive bidding pursuant to R651-700-12.

R651-700-11. Compensation for ROW, Easements, Leases and Special Use Leases.

(1) In establishing the amount of annual compensation, or minimum bid at auction, the Division shall:

(a) Adhere to the policies contained in R651-700-5 of these rules;

(b) Whenever practicable, base the amount of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner;

(c) Require the holder of a Special Use Lease for a communications facility to annually remit to the Division both;

(i) The full amount of the base annual compensation required by their lease, and

(ii) A payment, the amount to be determined by the Division on a case-by-case basis, of the rental received by the lessee during the previous calendar year from the sublessees using the subject facility authorized by the lease.

(d) In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.

(e) Rents for ROW, Easements, and leases are based on the costs incurred by the Division and fair market value. Fees are based on the current fee schedule that can be obtained from the Lands and Environmental Coordinator.

R651-700-12. Competitive Bidding Process for Special Use Leases.

(1) The Division shall determine on a case-by-case basis if an area requested for a Special Use Lease shall be offered to the public through competitive bidding. This decision shall be made after considering:

(a) Whether the area requested for a Special Use Lease or permit is Division Land;

(b) The nature of the use and length of authorization requested;

(c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and

(d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.

(2) If the Division determines that the greatest benefit to the public recreation and/or the Division would be achieved by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.

(3) The Notice of Leasehold Availability shall state;

(a) The location and size of the subject area;

(b) The user(s) approved by the Division for the subject area;

(c) The type of auction and minimum acceptable bid amount;

(d) What developments, if annex on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and

(e) The deadline for submitting a completed application to the Division.

(4) The Notice of Leasehold Availability shall be:

(a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;

(b) Posted on the Division Internet website; and

(c) Sent to persons indicating an interest in the subject parcel.

(5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of R651-700- (9 and 10) of these rules. The Division, however, shall have th right to reject any and all bids submitted.

R651-700-13. Right-Of-Way (ROW), Easements, Special Use Leases - Final Determination.

(1) The Director may deny any application if:

(a) The application does not include all the information required;

(b) The potential impact to public recreation, cultural/historic resources, view shed, wildlife habitat, or water quality is unacceptable;

(c) The proposed project contravenes the Recreation Management Plan or site master plan;

(d) The applicant has not, in the opinion of the Division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(e) There are, in the opinion of the Division, alternative locations reasonably available on lands not owned by the Division for the requested use including organized events that may harm public recreation, wildlife, wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails;

(f) The application's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party; or

(g) The applicant is in default on any previous obligation to the Division.

(2) If the application is rejected, the Division shall provide a written notice to the applicant.

(3) A ROW, Easement or Special Use Lease may include provisions requiring the applicant to:

(a) Restore all structures, including but not limited to fences, roads, and existing facilities, and regard as nearly as practical to the pre-project grade and contour, and re-vegetate the impacted area to Division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in subsection R651-700-9(4)(f);

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation and all other expenses associated with the project; and

(d) Provide all permits and clearances for the project.

(4) Prior to the issuance of an Easement, ROW, Special Use Permit or Special Use Lease or for good cause shown at any time during the term of the agreement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the Easement, ROW, Special Use Permit or Special Use Lease.

(5) Easements, R"OW, Special Use Permits and Special Use Leases issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency.

(6) If the Division decides to issue a ROW, Easement, or Special Use Lease to the applicant without competitive bidding, the written notice will also indicate;

(a) The amount of compensation that the applicant shall remit to the Division to obtain authorization;

(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of R651-700-16; and

(c) A draft copy of the ROW, Easement, or Special Use Lease.

(7) The Division shall not grant an Easement, ROW, Special Use Permit or Special Use Lease to the applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond.

(8) The Director may refer any applications for a Special

Use Lease to the Parks Board for review and approval.

R651-700-15. Easement, ROW, Special Use Permit or Special Use Lease - General Terms and Conditions.

(1) A ROW or Easement may be granted for a maximum of thirty (30) years from the date of the signing. The Division may grant such real property interests for shorter time periods. The Director may provide an exception, in whole or in part, to the rules for use of Division land and other recreational areas for an Easement, R"OW, Special Use Permit, or Special Use Lease granted pursuant to this section. The exception may be provided by a written decision issued by the Director and shall be effective for the term or such lesser period of time specified by the Director.

(2) The term of a Special Use Lease shall not exceed fifteen (15) years. The Division shall determine the length of a special use lease based on the nature of the use intended for the requested site. The Division may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Division.

(3) The term of a Special Use Permit shall not exceed one (1) year. A Special Use Permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of ninety (90) days each time.

(4) Special Use Leases and Special Use Permits shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use.

(5) The lessee or permittee may request the Division to close all or potions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, and/or crops from harm.

(6) The Division or its authorized representative(s) shall have3 the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or for wildfire control.

(7) The lessee, grantee or permittee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) A lessee, grantee or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across Division Land , or intimidate or otherwise threaten or harm public users of Division Land.

(9) Upon the expiration or termination of a ROW, Easement, Special Use Lease or Permit, the holder shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the Easement, ROW, lease or permit. Any developments remaining on the area authorized by the Easement, Row, lease or permit after the sixty (60) day period shall become the property of the Division. If the grantee, lessee or permittee refuse to remove the subject developments, the Division may remove them and charge the grantee, lessee or permittee for doing so.

(10) The holder of a Special Use Lease or permit shall not allow any other use to be made of, or occur on the site or vicinity that is not specifically authorized:

(a) By that lease or permit; or

(b) By the Division in writing prior to the use.

R651-700-16. Insurance and Bond - Easement, ROW, Special Use Lease, Special Use Permit.

(1) The Division may require a grantee, lessee or permittee to obtain insurance in a specified amount if the use, in the opinion of the Division, constitutes a risk to public safety, or to the State of Utah.

(2) The Division may request that the applicant, grantee, lessee or permittee provide information concerning the use of the area to the Risk Management, which may assist the Division in determining the appropriate amount of insurance coverage based on the nature of the use.

(3) All bonds posted on Easements, leases, ROW, or permits may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the Easement, and rules pertaining to the Easement. The bond shall be in effect even if the grantee has conveyed all or part of the Easement interest to a sub lessee, assignee, or subsequent operator until the grantee fully satisfies the Easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(4) Bonds may be increased in reasonable amounts, at any time as the Division may decide, provided grantor first gives grantee 30 days written notice stating the increase and the reasons(s) for the increase.

(5) Bonds may be accepted in any of the following forms at the discretion of the Division:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. However, the Division shall not be responsible for any investment returns on cash deposits;

(c) Certificate of deposit in the name of "The Division of State Parks and Recreation and applicant, c/o Applicant's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee shall be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the applicant prior to acceptance by the Director; or

(d) Other forms of surety as may be acceptable to the Division.

R651-700-17. Assignment of ROW, Easement, Special Use Leases and Special Use Permits, Subleasing.

(1) A ROW, Easement or Special Use Lease in good standing is freely assignable.

(2) Special Use Permits are non-assignable.

(3) To assign a ROW, Easement or Special Use Lease, the lessee shall submit a:

(a) Notice of proposed assignment on a form provided by the Division; and

(b) Non-refundable assignment processing fee payable to the Division.

(4) The Division shall make every effort to complete its review of such proposed assignments within thirty (30) calendar days of receipt of the notice. The Division may request additional information concerning the proposed assignment.

(5) A sublease or assignment may be made only to a person, firm, association, or corporation qualified to do business in the State of Utah, and which is not in default under the laws of the State of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the Division.

(6) A lessee wanting to offer a sublease to another person shall:

(a) Obtain prior written authorization from the Division by applying to the Division on a form provided by the Division, and

(b) Submit to the Division rent, in an amount to be determined by the Division on a case-by-case basis, at the end of the calendar year.

(7) A sublease or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee/lessee, any conditions in the assignment to the contrary not withstanding.

(8) A sublease or assignment must be a sufficient legal

instrument, properly executed and acknowledged, and should be clearly set forth the lease or contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing or assigning the interest shall be given to the Division.

(9) A sublease or assignment shall be executed according to Division procedures.

(10) A sublease or assignment is not effective until approved by the Division.

R651-700-18. ROW, Easement, Special Use Leases and Special Use Permits - Unauthorized Uses and Penalties.

(1) Uses and developments subject to, but not authorized by a ROW, Easement, Special Use Lease or Special Use Permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law3, the placement of ay development on, or use of Division Land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

R651-700-19. Termination of a Special Use Lease or Special Use Permit for Default.

(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permitees in writing of the default and demand correction within a specified time frame.

(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease or permit, and/or

(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.

R651-700-20. Abandonment or ROW, Easement, or Lease.

(1) If within 365 days of the date of execution of a ROW, Easement or lease a grantee/lessee fails to construct and install the infrastructure which necessitate the grantee/lessee's acquisition of a ROW, Easement or lease, or the grantee/lessee otherwise fails to use all of any portion of a ROW, Easement or lease, that portion of the ROW, Easement or lease so unused shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW or lease shall be terminated with no compensation due from the Division.

(2) If proof of grantee/lessee's use of all or portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease shall be terminated with no compensation due from the Division.

R651-700-21. ROW, Easement, Special Use Leases and Special Use Permits - Reconsideration of Decision.

(1) An applicant or any other person adversely affected by the issuance of denial may request that the Director or the parks Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) If the Director made the decision of concern, she/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(c) If the decision was made by the parks Board, the Director may recommend to the parks Board either that the Special Use Lease or permit issuance or denial be modified based on the merits of the request.

R651-700-22. Water Rights.

(1) It is the policy of the Division of Parks and Recreation to use its water resources for beneficial purposes in support of public recreation, including but not limited to, protecting scenic attractions and recreational values for the present and future citizens of Utah.

KEY: property
October 27, 2009 **79-4**
79-4-203
79-4-203.5(a)

R655. Natural Resources, Water Rights.
R655-4. Water Well Drillers.
R655-4-1. Purpose, Scope, and Exclusions.

1.1 Purpose.

These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water; insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, and abandonment of water wells and other regulated wells; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water.

All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by R655-6 "Administrative Procedures for Informal Proceedings Before the Division of Water Rights".

1.2 Scope.

The drilling, construction, deepening, repair, renovation, replacement, cleaning, development, or abandonment of the following types of wells is regulated by these administrative rules and the work must be permitted by the Utah Division of Water Rights and completed by a licensed well driller. These rules apply to both vertical, angle and horizontal wells if they fall within the criteria listed below. The rules contained herein pertain only to work on the well itself. These rules do not regulate the incidental work around the well such as pump and motor installation and repair; plumbing, electrical, and excavation work up to the well; and the building of well enclosures unless these activities directly impact or change the construction of the well itself. The process for an applicant to obtain approval to drill, construct, deepen, repair, renovate, clean, develop, abandon, or replace the wells listed below in 1.2.1, 1.2.2, 1.2.3, and 1.2.4 is outlined in Section R655-4-7 of these rules.

1.2.1 Cathodic protection wells which are completed to a depth greater than 30 feet.

1.2.2 Heating or cooling exchange wells which are greater than 30 feet in depth and which encounter formations containing groundwater. If a separate well or borehole is required for re-injection purposes, it must also comply with these administrative rules.

1.2.3 Monitor, piezometer, and test wells designed for the purpose of testing and monitoring water quality and quantity which are completed to a depth greater than 30 feet.

1.2.4 Other wells (cased or open) which are completed to a depth greater than 30 feet that can potentially interfere with established aquifers such as wells to monitor mass movement (inclinometers), facilitate horizontal utility placement, monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures (dewatering wells).

1.2.5 Private water production wells which are completed to a depth greater than 30 feet.

1.2.6 Public water system supply wells.

1.2.7 Recharge and recovery wells which are drilled under the provisions of Title 73, Chapter 3b "Groundwater Recharge and Recovery Act" Utah Code Annotated.

1.3 Exclusions.

The drilling, construction, deepening, repair, renovation, replacement, cleaning, development, or abandonment of the following types of wells or boreholes are excluded from regulation under these administrative rules:

1.3.1 Any wells described in Section 1.2 that are constructed to a final depth of 30 feet or less. However, diversion and beneficial use of groundwater from wells at a depth of 30 feet or less shall require approval through the appropriation procedures and policies of the state engineer and Title 73, Chapter 3 of the Utah Code Annotated.

1.3.2 Geothermal wells. Although not regulated under the Administrative Rules for Water Well Drillers, geothermal wells are subject to Section 73-22-1 "Utah Geothermal Resource Conservation Act" Utah Code Annotated and the rules promulgated by the state engineer including Section R655-1, Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.

1.3.3 Temporary exploratory wells drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed or an area proposed to be used as a potential source of material for construction.

1.3.4 Wells or boreholes drilled or constructed into non-water bearing zones or which are 30 feet or less in depth for the purpose of utilizing heat from the surrounding earth.

1.3.5 Geotechnical borings drilled to obtain lithologic data which are not installed for the purpose of utilizing or monitoring groundwater, and which are properly sealed immediately after drilling and testing.

1.3.6 Oil, gas, and mineral exploration/production wells. These wells are subject to rules promulgated under the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources.

R655-4-2. Definitions.

ABANDONED WELL - any well which is not in use and has been sealed or plugged with approved sealing materials so that it is rendered unproductive and will prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water bearing zones.

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) - a nationally recognized testing laboratory that certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) - an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19013.

AMERICAN WATER WORKS ASSOCIATION (AWWA) - an international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard will provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235.

ANNULAR SPACE - the space between the outer well casing and the borehole or the space between two sets of casing.

AQUIFER - a porous underground formation yielding withdrawable water suitable for beneficial use.

ARTESIAN AQUIFER - a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

ARTESIAN WELL - a well where the water level rises appreciably above the zone of saturation.

BENTONITE - a highly plastic, highly absorbent, colloidal swelling clay composed largely of mineral sodium montmorillonite. Bentonite is commercially available in powdered, granular, tablet, pellet, or chip form which is hydrated with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the

control of potential or existing high fluid pressures encountered during drilling below a water table, well abandonment, and to provide a seal in the annular space between the well casing and borehole wall.

BENTONITE GROUT - a mixture of bentonite and potable water specifically designed to seal and plug wells and boreholes mixed at manufacturer's specifications to a grout consistency which can be pumped through a pipe directly into the annular space of a well or used for abandonment. Its primary purpose is to seal the borehole or well in order to prevent the subsurface migration or communication of fluids.

CASH BOND - A type of well driller bond in the form of a certificate of deposit (CD) submitted and assigned to the State Engineer by a licensed driller to satisfy the required bonding requirements.

CASING - a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

CATHODIC PROTECTION WELL - a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipelines, transmission lines, well casings, storage tanks, or pilings.

CONFINING UNIT - a geological layer either of unconsolidated material, usually clay or hardpan, or bedrock, usually shale, through which virtually no water moves.

CONSOLIDATED FORMATION - bedrock consisting of sedimentary, igneous, or metamorphic rock (e.g., shale, sandstone, limestone, quartzite, conglomerate, basalt, granite, tuff, etc.).

DEWATERING WELL - a water extraction well constructed for the purpose of lowering the water table elevation, either temporarily or permanently, around a man-made structure or construction activity.

DISINFECTION - or disinfecting is the use of chlorine or other disinfecting agent or process approved by the state engineer, in sufficient concentration and contact time adequate to inactivate or eradicate bacteria such as coliform or other organisms.

DRAWDOWN - the difference in elevation between the static water level and the pumping water level in a well.

DRILL RIG - any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

EMERGENCY SITUATION - any situation where immediate action is required to protect life or property. Emergency status would also extend to any situation where life is not immediately threatened but action is needed immediately and it is not possible to contact the state engineer for approval. For example, it would be considered an emergency if a domestic well needed immediate repair over a weekend when the state engineer's offices are closed.

GRAVEL PACKED WELL - a well in which filter material such as sand and/or gravel is placed in the annular space between the well intakes (screen or perforated casing) and the borehole wall to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

GROUNDWATER - subsurface water in a zone of saturation.

GROUT - a fluid mixture of Portland cement or bentonite with water of a consistency that can be forced through a pipe and placed as required. Upon approval, various additives such as sand, bentonite, and hydrated lime may be included in the mixture to meet different requirements.

HYDRAULIC FRACTURING - the process whereby water or other fluid is pumped with sand under high pressure into a well to fracture and clean-out the rock surrounding the well bore thus increasing the flow to the well.

MONITOR WELL - a well, as defined under "well" in this section, that is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water.

NATIONAL SANITATION FOUNDATION (NSF) - a voluntary third party consensus standards and testing entity established under agreement with the U. S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products.

Information may be obtained from: NSF, 3475 Plymouth Road, P O Box 1468, Ann Arbor, Michigan 48106.

NEAT CEMENT GROUT - cement conforming to the ASTM Standard C150 (standard specification of Portland cement), with no more than six gallons of water per 94 pound sack (one cubic foot) of cement of sufficient weight density of not less than 15 lbs/gallon.

OPERATOR - a drill rig operator is an individual who works under the direct supervision of a licensed Utah Water Well Driller and who can be left in responsible charge to construct water wells using equipment that is under the direct control of the licensee.

PIEZOMETER - a tube or pipe, open at the bottom in groundwater, and sealed along its length, used to measure hydraulic head or water level in a geologic unit.

PITLESS ADAPTER OR UNIT - an assembly of parts designed for attachment to a well casing which allows buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit extension of the casing above ground as required in Subsection R655-4-9.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

POLLUTION - the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

POTABLE WATER - water supplied for human consumption, sanitary use, or for the preparation of food or pharmaceutical products which is free from biological, chemical, physical, and radiological impurities.

PRESSURE GROUTING - a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

PRIVATE WATER PRODUCTION WELL - a privately owned well constructed to supply water for any purpose which has been approved by the state engineer (such as irrigation, stockwater, domestic, commercial, industrial, etc.).

PROBATION - A disciplinary action that may be taken by the state engineer that entails greater review and regulation of well drilling activities but which does not prohibit a well driller from engaging in the well drilling business or operating well drilling equipment.

PROVISIONAL WELL - authorization granted by the state engineer to drill under a pending, unapproved water right, change or exchange application; or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a provisional well cannot be put to beneficial use until the application has been approved.

PUBLIC WATER SYSTEM SUPPLY WELL - a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25

individuals daily for at least 60 days out of the year. Public Water System Supply Wells are also regulated by the Division of Drinking Water in the Utah Department of Environmental Quality (Section R309 of the Utah Administrative Code).

PUMPING WATER LEVEL - the water level in a well after a period of pumping at a given rate.

REVOCATION - A disciplinary action that may be taken by the state engineer that rescinds the well driller's Utah Water Well Driller's License

SAND - a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

SAND CEMENT GROUT - a grout consisting of equal parts of cement conforming to ASTM standard C150 and sand/aggregate with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement.

STANDARD DIMENSION RATIO (SDR) - the ratio of average outside pipe diameter to minimum pipe wall thickness.

STATE ENGINEER - the director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules.

STATIC LEVEL - stabilized water level in a non-pumped well beyond the area of influence of any pumping well.

SURETY BOND - an indemnity agreement in a sum certain and payable to the state engineer, executed by the licensee as principal and which is supported by the guarantee of a corporation authorized to transact business as a surety in the State of Utah.

SUSPENSION - A disciplinary action that may be taken by the state engineer that prohibits the well driller from engaging in the well drilling business or operating well drilling equipment as a registered operator for a definite period of time and /or until certain conditions are met.

TEST WELL - authorization granted by the state engineer to drill under a Non-production well approval for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a Test Well cannot be put to beneficial use.

TREMIE PIPE - a device that carries materials such as seal material, gravel pack, or formation stabilizer to a designated depth in a drill hole or annular space.

UNCONSOLIDATED FORMATION - loose, soft, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good water storage and transmissivity characteristics.

UNHYDRATED BENTONITE - dry bentonite consisting primarily of granules, tablets, pellets, or chips that may be placed in a well or borehole in the dry state and hydrated in place by either formation water or by the addition of potable water into the well or borehole containing the dry bentonite. Unhydrated bentonite can be used for sealing and abandonment of wells.

VADOSE ZONE - the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

WATERTIGHT - a condition that does not allow the entrance, passage, or flow of water under normal operating conditions.

WELL - a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, augering, or driving or any other artificial method and left cased or open for utilizing or monitoring underground waters.

WELL DRILLER - any person who is licensed by the state engineer to construct water wells for compensation or otherwise. The licensed driller has total responsibility for the construction work in progress at the well drilling site.

WELL DRILLER BOND - A financial guarantee to the state engineer, in the form of a surety bond or cash bond, by which a licensed driller binds himself to pay the penal sum of $5,000 to the state engineer in the event of significant noncompliance with the Administrative Rules for Water Well Drillers.

WELL DRILLING - the act of drilling, constructing, deepening, replacing, repairing, renovating, cleaning, developing, or abandoning a well.

R655-4-3. Licenses and Registrations.

3.1 General.

3.1.1 Section 73-3-25 of the Utah Code requires every person that constructs a well in the state to obtain a license from the state engineer. Licenses and registrations are not transferable.

3.1.2 Any person found to be drilling a well without a valid well driller's license or operator's registration will be ordered to cease drilling by the state engineer. The order may be made verbally but must also be followed by a written order. The order may be posted at an unattended well drilling site. A person found drilling without a license will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC) and subject to criminal prosecution under Section 73-3-26 of the Utah Code annotated, 1953.

3.2 Well Driller's License.

An applicant must meet the following requirements to become licensed as a Utah Water Well Driller:

3.2.1 Applicants must be 21 years of age or older.

3.2.2 Complete and submit the application form provided by the state engineer.

3.2.3 Pay the application fee approved by the state legislature.

3.2.4 Provide documentation of experience according to the following standards:

3.2.4.1 Water well drillers shall provide documentation of at least two (2) years of full time prior water well drilling experience with a licensed driller in good standing OR documentation of sixteen (16) wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.2 Monitor well drillers shall provide documentation of at least two (2) years of full time prior monitor well drilling experience with a licensed driller in good standing OR documentation of thirty two (32) wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.3 Heating/cooling exchange and other non-production well drillers must provide documentation of at least six (6) months of full time prior well drilling experience with a licensed driller in good standing AND documentation of sixteen (16) well drilling projects constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.4 A copy of the well log for each well constructed must be provided. The documentation must also show the applicant's experience with each type of drilling rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, letters from licensed well drillers (Utah or other states), or a water well drilling license granted by another state, etc.

3.2.4.5 Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twenty five percent of the required drilling experience, and for up to, but not exceeding, twenty five percent of the required drilled wells or well drilling projects. The state engineer will determine the number of months of drilling experience and the number of drilled wells that will be credited for the classroom study.

3.2.5 File a well driller bond in the sum of $5,000 with the Division of Water Rights payable to the state engineer. The well driller bond must be filed under the conditions and criteria described in Section 4-3.6.

3.2.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Well Drillers and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer for water well construction;

c. Geologic formations and proper names used in describing underground material types;

d. Reading maps and locating points from descriptions based on section, township, and range;

e. Groundwater geology and the occurrence and movement of groundwater;

f. The proper operating procedures and construction methods associated with the various types of water well drilling rigs. (A separate test is required for each type of water well drilling rig to be listed on the license).

3.2.7 Demonstrate proficiency in resolving problem situations that might be encountered during the construction of a water well by passing an oral examination administered by the state engineer.

3.3 Drill Rig Operator's Registration.

An applicant must meet the following requirements to become registered as a drill rig operator:

3.3.1 Applicants must be 18 years of age or older.

3.3.2 Complete and submit the application form provided by the state engineer.

3.3.3 Pay the application fee approved by the state legislature.

3.3.4 Provide documentation of at least six (6) months of prior water well drilling experience with a licensed driller in good standing. The documentation must show the applicant's experience with each type of drilling rig to be listed on the registration. Acceptable documentation will include letters from licensed well drillers or registration as an operator in another state.

3.3.5 Obtain a score of at least 70% on a written examination of the minimum construction standards established by the state engineer for water well construction. The test will be provided to the licensed well driller by the state engineer. The licensed well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.4 Conditional, Restricted, or Limited Licenses.

The state engineer may issue a restricted, conditional, or limited license to an applicant based on prior drilling experience.

3.5 Refusal to Issue a License or Registration.

The state engineer may, upon investigation and after a hearing, refuse to issue a license or a registration to an applicant if it appears the applicant has not had sufficient training or experience to qualify as a competent well driller or operator.

3.6 Falsified Applications.

The state engineer may, upon investigation and after a hearing, revoke a license or a registration in accordance with Section 5.6 if it is determined that the original application contained false or misleading information.

3.7 Well Driller Bond.

3.7.1 General

3.7.1.1. In order to become licensed and to continue licensure, a well driller must file a well driller bond in the form of a surety bond or cash bond, approved by the state engineer, in the sum of five thousand dollars ($5,000) with the Division of Water Rights, on a form provided by the Division, which is conditioned upon proper compliance with the law and these rules and which is effective for the licensing period in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer". The well driller bond is penal in nature and is designed to ensure compliance by the licensed well driller to protect the groundwater resource, the environment, and public health and safety. The bond may only be exacted by the state engineer for the purposes of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. No other person or entity may initiate a claim against the well driller bond. Lack of a current and valid well driller bond shall be deemed sufficient grounds for denial of a driller's license. The well driller bond may consist of a surety bond or a cash bond as described below.

3.7.2 Surety Bonds.

3.7.2.1. The licensed well driller and a surety company or corporation authorized to do business in the State of Utah as surety shall bind themselves and their successors and assigns jointly and severally to the state engineer for the use and benefit of the public in full penal sum of five thousand dollars ($5,000). The surety bond shall specifically cover the licensee's compliance with the Administrative Rules for Water Well Drillers found in R655-4 of the Utah Administrative Code. Forfeiture of the surety bond shall be predicated upon a failure to drill, construct, repair, renovate, deepen, clean, develop, or abandon a regulated well in accordance with these rules (R655-4 UAC). The bond shall be made payable to the 'Utah State Engineer' upon forfeiture. The surety bond must be effective and exactable in the State of Utah.

3.7.2.2. The bond and any subsequent renewal certificate shall specifically identify the licensed individual covered by that bond. The licensee shall notify the state engineer of any change in the amount or status of the bond. The licensee shall notify the state engineer of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change. Prior to the expiration of the 30-days notice of cancellation, the licensee shall deliver to the state engineer a replacement surety bond or transfer to a cash bond. If such a bond is not delivered, all activities covered by the license and bond shall cease at the expiration of the 30 day period. Termination shall not relieve the licensee or surety of any liability for incidences that occurred during the time the bond was in force.

3.7.2.3. Before the bond is forfeited by the licensed driller and exacted by the state engineer, the licensed driller shall have the option of resolving the noncompliance to standard either by personally doing the work or by paying to have another licensed driller do the work. If the driller chooses not to resolve the problem that resulted in noncompliance, the entire bond amount of five thousand dollars ($5,000) shall be forfeited by the surety and expended by the state engineer to investigate, repair or abandon the well(s) in accordance with the standards in R655-4 UAC. Any excess there from shall be retained by the state engineer and expended for the purpose of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. All claims initiated by the state engineer against the surety bond will be made in writing.

3.7.2.4. The bond of a surety company that has failed, refused or unduly delayed to pay, in full, on a forfeited bond is not approvable.

3.7.3 Cash Bonds.

3.7.3.1. The requirements for the well driller bond may alternatively be satisfied by a cash bond in the form of a certificate of deposit (CD) for the amount of five thousand dollars ($5,000) issued by a federally insured bank or credit union with an office(s) in the State of Utah. The cash bond must be in the form of a CD. Savings accounts, checking accounts, letters of credit, etc., are not acceptable cash bonds. The CD shall specifically identify the licensed individual

covered by that fund. The CD shall be automatically renewable and fully assignable to the state engineer. CD shall state on its face that it is automatically renewable.

3.7.3.2. The cash bond shall specifically cover the licensee's compliance with well drilling rules found in R655-4 of the Utah Administrative Code. The CD shall be made payable or assigned to the state engineer and placed in the possession of the state engineer. If assigned, the state engineer shall require the bank or credit union issuing the CD to waive all rights of setoff or liens against those CD. The CD, if a negotiable instrument, shall be placed in the state engineer's possession. If the CD is not a negotiable instrument, the CD and a withdrawal receipt, endorsed by the licensee, shall be placed in the state engineer's possession.

3.7.3.3. The licensee shall submit CDs in such a manner which will allow the state engineer to liquidate the CD prior to maturity, upon forfeiture, for the full amount without penalty to the state engineer. Any interest accruing on a CD shall be for the benefit of the licensee.

3.7.3.4. The period of liability for a cash bond is five (years) after the expiration, suspension, or revocation of the license. The cash bond will be held by the state engineer until the five year period is over, then it will be relinquished to the licensed driller. In the event that a cash bond is replaced by a surety bond, the period of liability, during which time the cash bond will be held by the state engineer, shall be five (5) years from the date the new surety bond becomes effective.

3.7.4 Exacting a Well Driller Bond.

3.7.4.1. If the state engineer determines, following an investigation and a hearing in accordance with the process defined in Section 4-5, that the licensee has failed to comply with the Administrative Rules for Water Well Drillers and refused to remedy the noncompliance, the state engineer may suspend or revoke a well driller's license and fully exact the well driller bond and deposit the money as a non-lapsing dedicated credit.

3.7.4.2. The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller.

3.7.4.3. The state engineer shall send written notification by certified mail, return receipt requested, to the licensee and the surety on the bond, if applicable, informing them of the determination to exact the well driller bond. The state engineer's decision regarding the noncompliance will be attached to the notification which will provide facts and justification for bond exaction. In the case of a surety bond exaction, the surety company will then forfeit the total bond amount to the state engineer. In the case of a cash bond, the state engineer will cash out the CD. The exacted well driller bond funds may then be used by the state engineer to cover the costs of well investigation, repair, and/or abandonment.

R655-4-4. Administrative Requirements and General Procedures.

4.1 Authorization to Drill.

The well driller shall make certain that a valid authorization or approval to drill exists before engaging in regulated well drilling activity. Authorization to drill shall consist of a valid 'start card' based on any of the approvals listed below. Items 4.1.1 through 4.1.12 allow the applicant to contract with a well driller to drill, construct, deepen, replace, repair, renovate, clean, develop, or abandon exactly one well at each location listed on the start card or approval form. The drilling of multiple borings/wells at an approved location/point of diversion is not allowed without authorization from the state engineer's office. Most start cards list the date when the authorization to drill expires. If the expiration date has passed, the start card and authorization to engage in regulated drilling activity is no longer valid. If there is no expiration date on the start card, the driller must contact the state engineer's office to determine if the authorization to drill is still valid. When the work is completed, the permission to drill is terminated.

4.1.1 An approved application to appropriate.

4.1.2 A provisional well approval letter.

An approved provisional well letter grants authority to drill but allows only enough water to be diverted to determine the characteristics of an aquifer or the existence of a useable groundwater source.

4.1.3 An approved permanent change application.

4.1.4 An approved exchange application.

4.1.5 An approved temporary change application.

4.1.6 An approved application to renovate or deepen an existing well.

4.1.7 An approved application to replace an existing well.

4.1.8 An approved monitor well letter.

An approved monitor well letter grants authority to drill but allows only enough water to be diverted to monitor groundwater.

4.1.9 An approved heat exchange well letter.

4.1.10 An approved cathodic protection well letter.

4.1.11 An approved non-production well construction application.

4.1.12 Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

4.2 Start Cards.

4.2.1 Prior to commencing any work (other than abandonment, see 4.2.4) on any well governed by these administrative rules, the driller must notify the state engineer of that intention by transmitting the information on the "Start Card" to the state engineer by telephone, by facsimile (FAX), by hand delivery, or by e-mail. A completed original Start Card must be sent to the state engineer by the driller after it has been telephoned or E-mailed.

4.2.2 A specific Start Card is printed for each well drilling approval and is furnished by the state engineer to the applicant or the well owner. The start card is preprinted with the water right or non-production well number, owner name/address, and the approved location of the well. The state engineer marks the approved well drilling activity on the card. The driller must put the following information on the card:

a. The date on which work on the well will commence;

b. The projected completion date of the work;

c. The well driller's license number;

d. The well driller's signature.

4.2.3 When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled.

4.2.4 Following the submittal of a start card, if the actual start date of the drilling activity is postponed beyond the date identified on the start card, the licensed driller must notify the state engineer of the new start date.

4.2.5 A start card is not required to abandon a well. However, prior to commencing well abandonment work, the driller is required to notify the state engineer by telephone, by facsimile, or by e-mail of the proposed abandonment work. The notice must include the location of the well. The notice should also include the water right or non-production well number associated with the well and the well owner if that information is available.

4.3 General Requirements During Construction.

4.3.1 The well driller shall have the required penal bond continually in effect during the term of the well driller's license.

4.3.2 The well driller's license number or the well driller's company name exactly as shown on the well drilling license must be prominently displayed on each well drilling rig operated under the well driller's license. If the well driller's

company name is changed the well driller must immediately inform the state engineer of the change in writing.

4.3.3 A licensed well driller or a registered operator must be at the well site whenever the following aspects of well construction are in process: advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, or abandoning. All registered operators working under a well driller's license must be employees of the well driller and must use equipment either owned by or leased by the licensed well driller.

4.3.4 A registered operator who is left in responsible charge of advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, or abandoning must have a working knowledge of the minimum construction standards and the proper operation of the drilling rig. The licensed well driller is responsible to ensure that a registered operator is adequately trained to meet these requirements.

4.3.5 State engineer provisions for issuing cease and desist orders (Red Tags)

4.3.5.1 Construction Standards: The state engineer or staff of the Division of Water Rights may order that regulated work on a well cease if a field inspection reveals that the construction does not meet the minimum construction standards to the extent that the public interest might be adversely affected.

4.3.5.2 Licensed Drilling Method: A cease work order may also be issued if the well driller is not licensed for the drilling method being used for the well construction.

4.3.5.3 Incompetent Registered Operator: If, during a field inspection by the staff of the Division of Water Rights, it is determined that a registered operator in responsible charge does not meet these requirements, a state engineer's red tag (see Section 4.3.5) will be placed on the drilling rig and the drilling operation will be ordered to shut down. The order to cease work will remain effective until a qualified person is available to perform the work.

4.3.5.4 No licensed driller or registered operator on site: If, during a field inspection by the staff of the Division of Water Rights, it is determined that neither a licensed driller or registered operator are one site when regulated drilling activity is occurring, the state engineer may order regulated well drilling work to cease.

4.3.5.5 General: The state engineer's order will be in the form of a red tag which will be attached to the drilling rig. A letter from the state engineer will be sent to the licensed driller to explain the sections of the administrative rules which were violated. The letter will also explain the requirements that must be met before the order can be lifted.

4.3.6 When required by the state engineer, the well driller or registered operator shall take lithologic samples at the specified intervals and submit them in the bags provided by the state engineer.

4.3.7 A copy of the current Administrative Rules for Water Well Drillers should be available at each well construction site for review by the construction personnel. Licensed well drillers and registered operators must have proof of licensure or registration with them on site during regulated drilling activity.

4.3.8 Prior to starting construction of a new well, the licensed driller shall investigate and become familiar with the drilling conditions, geology of potential aquifers and overlying materials, anticipated water quality problems, and know contaminated water bearing zones that may be encountered in the area of the proposed drilling activity.

4.4 Removing Drill Rig From Well Site.

4.4.1 A well driller shall not remove his drill rig from a well site unless the well drilling activity is properly completed or abandoned in accordance with the construction standards in Sections 9 thru 12.

4.4.2 For the purposes of these rules, the regulated work on a well will be considered completed when the well driller removes his drilling rig from the well site.

4.4.3 The well driller may request a variance from the state engineer to remove a drill rig from a well prior to completion or abandonment. This request must be in written form to the state engineer. The written request must provide justification for leaving the well incomplete or un-abandoned and indicate how the well will be temporarily abandoned as provided in Section R655-4-12 and must give the date when the well driller plans to continue work to either complete the well or permanently abandon it.

4.5 Official Well Driller's Report (Well Log).

4.5.1 Within 30 days of the completion of regulated work on any well, the driller shall file an official well driller's report (well log) with the state engineer. The blank well log form will be mailed to the licensed well driller upon receipt of the information on the Start Card as described in Subsection 4.2.

4.5.2 The water right number or non-production well number, owner name/address, and the approved location of the well will be preprinted on the blank well log provided to the well driller. The driller is required to verify this information and make any necessary changes on the well log prior to submittal. The state engineer will mark the approved activity (e.g., new, replace, repair, deepen) on the well log. The driller must provide the following information on the well log:

a. The start and completion date of work on the well;

b. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.;

c. The borehole diameter, depth interval, drilling method and drilling fluids utilized to drill the well;

d. The lithologic log of the well based on strata samples taken from the borehole as drilling progresses;

e. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

f. The size, type, description, joint type, and depth intervals of casing, screen, and perforations;

g. A description of the filter pack, surface and interval seal material, and packers used in the well along with necessary related information such as the depth interval, quantity, and mix ratio;

h. A description of the finished wellhead configuration;

i. The date and method of well development;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. A description of pumping equipment (if available);

l. Other comments pertinent to the well activity completed;

m. The well driller's statement to include the driller name, license number, signature, and date.

4.5.3 Accuracy and completeness of the submitted well log are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the well log form for submission to the state engineer.

4.5.4 An amended well log shall be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended well log must be accompanied by a written statement, signed and dated by the licensed well driller, attesting to the circumstances and the reasons for submitting the amended well log.

4.6 Official Well Abandonment Reports (Abandonment Logs).

4.6.1 Whenever a well driller is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the well driller to inform the well owner that it is required by law to permanently abandon the old well in accordance with the provisions of Section R655-4-12.

4.6.2 Within 30 days of the completion of abandonment work on any well, the driller shall file an abandonment log with the state engineer. The blank abandonment log will be mailed to the licensed well driller upon notice to the state engineer of commencement of abandonment work as described in Subsection R655-4-4(4.2.4).

4.6.3 The water right number or non-production well number, owner name/address, and the well location (if available) will be preprinted on the blank abandonment log provided to the well driller. The driller is required to verify this information and make any necessary changes on the abandonment log prior to submitting the log. The driller must provide the following information on the abandonment log:

a. Existing well construction information;

b. Date of abandonment;

c. Reason for abandonment;

d. A description of the abandonment method;

e. A description of the abandonment materials including depth intervals, material type, quantity, and mix ratio;

f. Replacement well information (if applicable);

g. The well driller's statement to include the driller name, license number, signature, and date.

4.6.4 When a well is replaced and the well owner will not allow the driller to abandon the existing well, the driller must briefly explain the situation on the abandonment form and submit the form to the state engineer within 30 days of completion of the replacement well.

4.7 Incomplete or Incorrectly Completed Reports.

An incomplete well/abandonment log or a well/abandonment log that has not been completed correctly will be returned to the licensed well driller to be completed or corrected. The well log will not be considered filed with the state engineer until it is complete and correct.

4.8 Extensions of Time.

The well driller may request an extension of time for filing the well log if there are circumstances which prevent the driller from obtaining the necessary information before the expiration of the 30 days. The extension request must be submitted in writing before the end of the 30-day period.

4.9 Late Well Logs - Lapsed License

All outstanding well logs or abandonment logs shall be properly submitted to the state engineer prior to the lapsing of a license. A person with a lapsed license who has failed to submit all well/abandonment logs within 90 days of lapsing will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC)

R655-4-5. Well Driller Disciplinary Procedures.

5.1 Well driller disciplinary procedures will be conducted informally and are governed by Sections 63G-4-202 (Designation of Adjudicative Proceedings as Informal) and 63G-4-203 (Procedures for Informal Adjudicative Proceedings) of the Utah Code and by Section R655-6 (Administrative Procedures for Informal Proceedings Before the Division of Water Rights) of the Utah Administrative Code.

5.2 List of Infractions and Points.

Licensed well drillers who commit the infractions listed below in Table 1 shall have assessed against their well drilling record the number of points assigned to the infraction.

TABLE 1

Level I Infractions of Administrative Requirements

	Points
Well log submitted late	10
Well abandonment report submitted late	10
Well driller license or well driller name not clearly posted on well drilling rig	10
Failing to notify the state engineer of a change in the well driller's company name	10
Failure to properly notify the state engineer before the proposed start date shown on the start card	20
Failure to notify the state engineer of a change of start date	50
Constructing a replacement well further than 150 ft from the original well without the authorization of an approved change application	50
Failure to drill at the state engineer approved location as identified on the start card	50
Removing the well drilling rig from the well site before completing the well or temporarily or permanently abandoning the well	50

TABLE 2

Level II Infractions of Administrative Requirements

	Points
Employing an operator who is not registered with the state	75
Contracting out work to an unlicensed driller (using the unlicensed driller's rig) without prior written approval from the state	75
Performing any well drilling activity without valid authorization (except in emergency situations)	100
Intentionally making a material misstatement of fact in an official well driller's report or amended official well driller's report (well log)	100

TABLE 3

Level III Infractions of Construction Standards / Conditions

	Points
Approvals	
Using a method of drilling not listed on the well driller's license	30
Failing to comply with any conditions included on the well approval such as minimum or maximum depths, specified locations of perforations, etc.	50
Performing any well construction activity in violation of a red tag cease work order	100
Casing	
Failure to extend well casing at least 18" above ground	30
Failure to install a protective casing around a PVC well at the surface	50
Using improper casing joints	100
Using or attempting to use sub-standard well casing	100
Surface Seals	
Using improper products or procedures to install a surface seal	100
Failure to seal off artesian flow on	

the outside of casing	100
Failure to install surface seal to adequate depth based on formation type	100
Failure to install interval seals to eliminate aquifer commingling or cross contamination	100
Well Abandonment	
Using improper procedures to abandon a well	100
Using improper products to abandon a well	100
Construction Fluids	
Using water of unacceptable quality in the well drilling operation	40
Using an unacceptable mud pit	40
Failure to use treated or disinfected water for drilling processes	40
Using improper circulation materials or drilling chemicals	100
Filter Packs	
Failure to disinfect filter pack	40
Failure to install filter pack properly	75
Well Completion	
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Failure to disinfect a well upon completion of well drilling activity	40
Failure to install a pitless adapter according to standard	75
Failure to develop and test a well according to standard	75
General	
Failure to securely cover an unattended well during construction	30
Failure to engage in well drilling activity in accordance with accepted industry practices	100

5.3 When Points Are Assessed.

Points will be assessed against a driller's record upon verification by the state engineer that an infraction has occurred. Points will be assessed at the time the state engineer becomes aware of the infraction regardless of when the infraction occurred.

5.4 Appeal of Infractions.

Well drillers may appeal each infraction in writing within 30 days of written notification by the state engineer.

5.5 Warning Letter.

When the number of points assessed against the well driller's record equals seventy-five (75) points, a warning letter will be sent to the well driller. The letter will notify the driller that if he continues to violate the administrative requirements or minimum construction standards contained in the Administrative Rules for Water Well Drillers, a hearing will be held to determine if his license should be suspended or revoked or the bond exacted. The letter will also describe the options available to the driller to delete points from the record as described in Subsection R655-4-5.7. A copy of the driller's infraction record will be included with the letter. In the event numerous points are assessed against the well drillers record so that the total surpasses seventy-five (75) and one hundred (100) points at the same time, no warning letter will be sent.

5.6 Well Driller Hearings.

5.6.1 When the number of points assessed against the well driller's record equals 100, a Notice of Agency Action (NAA) will be sent to the well driller. The NAA will set forth the alleged facts, provide an opportunity for a response from the well driller, and provide notice of the hearing scheduled to consider the issues. The hearing will be scheduled at least 10 days from the date the NAA is mailed. The NAA will indicate the date, time, and place of the hearing.

5.6.2 A NAA may also be sent and a hearing may also be convened as a result of a complaint filed by a well owner regardless of the total number of points shown on the well driller's record.

5.6.3 A NAA may be sent and a hearing may be convened if there is evidence that a license or registration application submitted to the state engineer contains intentionally false or misleading information.

5.6.4 The purpose of the hearing will be to determine if disciplinary action is necessary regarding the water well driller's Utah Water Well License. The hearing will be recorded. At the hearing, testimony will be taken under oath regarding the alleged facts included in the NAA. Those providing testimony may include the water well driller, the well owner, Division of Water Rights staff, and others as deemed necessary. Evidence that is pertinent to the alleged facts may also be presented at the hearing. After considering the testimony and the evidence presented at the hearing, the State Engineer may determine either that there is no cause for action against the well driller's license or that disciplinary action is necessary.

5.7 Administrative Penalties.

Administrative penalties ordered against a licensed driller by the state engineer following a hearing can include probation, administrative fines, license suspension, and license revocation. Administrative penalties are ordered based on the severity of the infraction (Level I, II, III from Table 1 of Section 5.1) as well as the recurrence of an infraction.

5.7.1 Level I Administrative Penalties: Level I administrative penalties will be levied against Level I administrative infractions (see Table 1 of Section 5.1). The Level I administrative penalty structure is as follows:

5.7.1.1 At the first conviction of Level I infractions, the disciplinary action for the infractions shall be probation.

5.7.1.2 Second conviction shall result in probation and a fine at a rate of $2.50 per infraction point.

5.7.1.3 Third conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

5.7.1.4 Fourth conviction shall result in an elevated fine at a rate of $10.00 per infraction point and possible suspension.

5.7.1.5 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

5.7.1.6 Fines for late well logs and abandonment logs shall be calculated separately and added to fines calculated for other infractions. For late well log infractions, the points associated with each infraction will be multiplied by a factor based on the lateness of the well log. The infraction point multipliers are as follows:

TABLE 4

Tardiness of the log	Infraction Point Multiplier
1-2 weeks	0.50
2-4 weeks	1.00
1-3 months	1.50
3-6 months	2.00
6-9 months	2.50
9-12 months	3.00
Over 12 months	4.00

5.7.2 Level II Administrative Penalties: Level II administrative penalties will be levied against Level II administrative infractions (see Table 2 of Section 5.1). The Level II administrative penalty structure is as follows:

5.7.2.1 At the first conviction of Level II infractions, the disciplinary action shall result in probation and a fine at a rate of $2.50 per infraction point.

5.7.2.2 Second conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

5.7.2.3 Third conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

5.7.2.4 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

5.7.3 Level III Administrative Penalties: Level III administrative penalties will be levied against Level III construction infractions (see Table 3 of Section 5.1). The Level III administrative penalty structure is as follows:

5.7.3.1 At the first conviction of Level III infractions, the disciplinary action shall result in probation and a fine at a rate of $5.00 per infraction point.

5.7.3.2 Second conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

5.7.3.3 Third conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

5.7.4 Administrative Penalties - General

5.7.4.1 Penalties will only be imposed as a result of a well driller hearing.

5.7.4.2 Failure to pay a fine within 30 days from the date it is assessed will result in the suspension of the well driller license until the fine is paid.

5.7.4.3 Fines shall be deposited as a dedicated credit. The state engineer shall expend the money retained from fines for expenses related to well drilling activity inspection, well drilling enforcement, and well driller education.

5.7.5 Probation: As described above in Sections 5.7.1, 5.7.2, and 5.7.3, probation will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe first time infractions of the administrative rules that are limited in number and less serious in their impact on the well owner and on the health of the aquifer. The probation period will generally last until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.8.

5.7.6 Suspension: Suspension will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules, or infractions that a pose serious threat to the health of the aquifer, or a well driller's apparent disregard for the administrative rules or the state's efforts to regulate water well drilling. Depending upon the number and severity of the rule infractions as described above in Sections 5.7.1, 5.7.2, and 5.7.3, the state engineer may elect to suspend a well driller license for a certain period of time and/or until certain conditions have been met by the well driller. In establishing the length of the suspension, the state engineer will generally follow the guideline that three infraction points is the equivalent of one day of suspension. A well driller whose license has been suspended will be prohibited from engaging in regulated well drilling activity. License suspension may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.7.4. A well driller whose license has been suspended is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. If the suspension period extends beyond the expiration date of the water well driller license, the water well driller may not apply to renew the license until the suspension period has run and any conditions have been met. Once the suspension period has run and once all conditions have been met by the well driller, the suspension will be lifted and the driller will be notified that he/she may again engage in the well drilling business. The well driller will then be placed on probation until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.8.

5.7.7 Revocation: Revocation will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules for which the well driller's Utah Water Well License has previously been suspended. Revocation will also be the disciplinary action taken if after a hearing the facts establish that a driller knowingly provided false or misleading information on a driller license application. A well driller whose license has been revoked will be prohibited from engaging in regulated well drilling activity. License revocation may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.7.4. A well driller whose license has been revoked is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. A well driller whose water well license has been revoked may not make application for a new water well license for a period of two years from the date of revocation. After the revocation period has run, a well driller may make application for a new license as provided in Section R655-4-3. However, the well drilling experience required must be based on new experience obtained since the license was revoked.

5.8 Deleting Point from the Driller Record.

Points assessed against a well driller's record will remain on the record unless deleted through any of the following options:

5.8.1 Points will be deleted three years after the date when the infraction is noted by the state engineer and the points are assessed against the driller's record.

5.8.2 One half the points on the record will be deleted if the well driller is free of infractions for an entire year.

5.8.3 Thirty (30) points will be deleted for obtaining six (6) hours of approved continuing education credits in addition to the credits required to renew the water well driller's license. A driller may exercise this option only once each year.

5.8.4 Twenty (20) points will be deleted for taking and passing (with a minimum score of 70%) the test covering the administrative requirements and the minimum construction standards. A driller may exercise this option only every other year.

5.9 Lack of Knowledge Not an Excuse.

Lack of knowledge of the law or the administrative requirements and minimum construction standards related to well drilling shall not constitute an excuse for violation thereof.

R655-4-6. Renewal of Well Driller's License and Operator's Registration.

6.1 Well Driller's Licenses.

6.1.1 Water well driller licenses shall expire and be renewed according to the following provisions:

a. The licenses of well drillers whose last name begins with A thru L shall expire at 12 midnight on June 30 of odd numbered years.

b. The licenses of well drillers whose last name begins with M thru Z shall expire at 12 midnight on June 30 of even numbered years.

c. Drillers who meet the renewal requirements set forth in Subsection R655-4-6(6.1.2) on or before the expiration deadlines set forth in Subsection R655-4-6(6.1.1) shall be authorized to operate as a licensed well driller until the new license is issued.

d. Drillers must renew their licenses within 24 months of the license expiration date. Drillers failing to renew within 24 months of the license expiration date must re-apply for a well driller's license, meet all the application requirements of Subsection R655-4-3(3.2), and provide documentation of 12 hours of continuing education according to the requirements of R655-4-6 (6.2) obtained within the previous 24 months.

6.1.2 Applications to renew a well driller's license must include the following items:

a. Payment of the license renewal fee determined and

approved by the legislature;

b. Written application to the state engineer;

c. Documentation of continuing well driller bond coverage in the amount of five thousand dollars ($5,000) penal bond for the next licensing period calendar year. The form and conditions of well driller bond shall be as set forth in Section 4.3. Allowable documentation can include bond continuation certificates and CD statements;

d. Proper submission of all start cards, official well driller reports (well logs), and well abandonment reports for the current licensing period;

e. Documentation of compliance with the continuing education requirements described in Section 6.2.1. Acceptable documentation of attendance at approved courses must include the following information: the name of the course, the date it was conducted, the number of approved credits, the name and signature of the instructor and the driller's name; for example, certificates of completion, transcripts, attendance rosters, diplomas, etc. (Note: drillers are advised that the state engineer will not keep track of the continuing education courses each driller attends during the year. Drillers are responsible to acquire and then submit documentation with the renewal application.)

6.1.3 License renewal applications that do not meet the requirements of Subsection R655-5-6(6.1.2) by June 30 of the expiration year or which are received after June 30 of the expiration year, will be assessed an additional administrative late fee determined and approved by the legislature.

6.1.4 The state engineer may renew a license on a restricted, conditional, or limited basis according to the driller's performance and compliance with established rules and construction standards. The state engineer my refuse to renew a license to a well driller if it appears that there has been a violation of these rules or a failure to comply with Section 73-3-25 of the Utah Code.

6.2 Continuing Education.

6.2.1 During each license period, licensed well drillers are required to earn at least twelve (12) continuing education credits by attending training sessions sponsored or sanctioned by the state engineer. Drillers who do not renew their licenses, but who intend to renew within the following 24 month period allowed in Section 6.1.1, are also required to earn twelve (12) continuing education credits.

6.2.2 The state engineer shall establish a committee consisting of the state engineer or a representative, no more than four licensed well drillers, a ground water scientist, and a manufacturer/supplier of well drilling products. The committee will develop criteria for the training courses, approve the courses which can offer continuing education credits, and assign the number of credits to each course. The committee will make recommendations to the state engineer concerning appeals from training course sponsors and well drillers related to earning continuing education credit.

6.2.3 The committee established in Section 6.2.2 shall assign the number of continuing education credits to each proposed training session based on the instructor's qualifications, a written outline of the subjects to be covered, and written objectives for the session. Well drillers wishing continuing education credit for other training sessions shall provide the committee with all information it needs to assign continuing education requirements.

6.2.4 Licensed drillers must complete a State Engineer-sponsored "Administrative Rules for Well Drillers" review course or other approved rules review once every four (4) years.

6.2.5 CE credits cannot be carried over from one licensing period to another.

6.3 Drill Rig Operator's Registration.

6.3.1 All operator's registrations shall expire at the same time as the license of the well driller by whom they are employed. Operators who meet the renewal requirements set forth in Subsection R655-4-6(6.3.2) on or before 12 midnight June 30 of the expiration year shall be authorized to act as a registered operator until the new registration is issued. Operators must renew their registrations within 24 months of the registration expiration date. Operators failing to renew within 24 months of the registration expiration date must re-apply for an operator's registration and meet all the application requirements of Subsection R655-4-3(3.3).

6.3.2 Applications to renew an operator's registration must include the following items:

a. Payment of the registration renewal fee determined and approved by the legislature;

b. Written application to the state engineer.

6.3.3 Registration renewal applications that do not meet the requirements of Subsection R655-4-6(6.3.2) by the June 30 expiration date or that are received after the June 30 expiration date will be assessed an additional administrative late fee determined and approved by the legislature.

R655-4-7. The Approval Process for Non-Production Wells.

7.1 General.

Regulated non-production wells such as cathodic protection wells, heating or cooling exchange wells, and monitor wells drilled and constructed to a depth greater than 30 feet below natural ground surface require approval from the state engineer.

7.2 Approval to Construct or Replace.

Approval to construct or replace non-production wells is issued by the state engineer's regional offices following review of written requests from the owner or applicant, federal or state agency or engineering representative. The requests for approval shall be made on forms provided by the state engineer entitled "Request for Non-Production Well Construction". The following information must be included on the form:

a. General location or common description of the project.

b. Specific course and distance locations from established government surveyed outside section corners or quarter corners.

c. Total anticipated number of wells to be installed.

d. Diameters, approximate depths and materials used in the wells.

e. Projected start and completion dates.

f. Name and license number of the driller contracted to install the wells.

There is no fee required to request approval to drill a non-production wells. Upon written approval by the state engineer, the project will be assigned an approved non-production well number which will be referenced on all start cards and official well driller's reports.

R655-4-8. General Requirements.

8.1 Standards.

8.1.1 In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller shall judge when to construct wells under more stringent standards when such precautions are necessary to protect the groundwater supply and those using the well in question. Other state and local regulations pertaining to well drilling and construction, groundwater protection, and water quality regulations may exist that are either more stringent than these rules or that specifically apply to a given situation. It is the well driller's responsibility to understand and apply other regulations as applicable.

8.2 Well Site Locations.

8.2.1 Well site locations are described by course and distance from outside section corners or quarter corners (based

on a Section/Township/Range Cadastral System) and by the Universal Transverse Mercator (UTM) coordinate system on all state engineer authorizations to drill (Start Cards). However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location and construction in relationship to property/structure boundaries and existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc. The licensee should also be familiar with the Utah Underground Facilities Act (Title 54, Chapter 8a of the Utah Code Annotated 1953 as amended) which requires subsurface excavators (including well drilling) to notify operators of underground utilities prior to any subsurface excavation. Information on this requirement can be found by calling (800)662-4111.

8.2.2 Regulated wells shall be drilled at the approved location as defined on the valid start card. The driller shall check the drilling location to see if it matches the state-approved location listed on the Driller's Start Card.

8.3 Unusual Conditions.

8.3.1 If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller shall request that special standards be prescribed for a particular well. The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensed water well driller believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, he will approve the proposed changes by assigning special standards for the particular well under consideration.

R655-4-9. Well Drilling and Construction Requirements.

9.0 General.

9.0.1 Figures 1 through 5 are used to illustrate typical well construction standards, and can be viewed in the State of Utah Water Well Handbook available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Figure 1 illustrates the typical construction of a drilled well with driven casing such as a well drilled using the cable tool method or air rotary with a drill-through casing driver. Figure 2 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed without the use of surface casing. Figure 3 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed with the use of surface casing. Figure 4 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed completed in stratified formations in which poor formation material or poor quality water is encountered. Figure 5 illustrates the typical construction of a well completed with PVC or nonmetallic casing.

9.1 Approved Products, Materials, and Procedures.

9.1.1 Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development or abandonment of water or monitor wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section and upon state engineer approval.

9.2 Well Casing - General

9.2.1 Drillers Responsibility. It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well being constructed, in accordance with these minimum requirements.

9.2.2 Casing Stick-up. The well casing shall extend a minimum of 18 inches above finished ground level and the natural ground surface should slope away from the casing. A secure sanitary, weatherproof seal or a completely welded cap shall be placed on the top of the well casing to prevent contamination of the well. If a vent is placed in the cap, it shall be properly screened to prevent access to the well by debris, insects, or other animals.

9.2.3 Steel Casing. All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, clean with all potentially dangerous chemicals or coatings removed, and shall meet the minimum specifications listed in Table 5 of these rules. In order to utilize steel well casing that does not fall within the categories specified in Table 5, the driller shall receive written approval from the state engineer. All steel casing installed in Utah shall meet or exceed the minimum ASTM, ANSI, or AWWA standards for steel pipe as described in Subsection 9.1 unless otherwise approved by the state engineer. Applicable standards (most recent revisions) may include:

ANSI/AWWA A100-AWWA Standard for Water Wells.

ANSI/ASTM A53-Standard Specifications for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.

ANSI/ASTM A139-Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and over).

ANSI/AWWA C200-Standard for Steel Water Pipe-6 in. and Larger.

API Spec.5L-Specification for Liner Pipe.

ASTM A106-Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service

ASTM A778-Standard Specifications for Welded, Unannealed Austenitic Stainless Steel Tubular Products.

ASTM A252-Standard Specification for Welded and Seamless Steel Pipe Piles.

ASTM A312-Standard Specification for Seamless, Welded, and Heavily Cold Worked Austenitic Stainless Steel Pipes

TABLE 5
MINIMUM WALL THICKNESS FOR STEEL WELL CASING

Depth Nominal Casing Diameter	0 to 200 (ft)	200 to 300 (ft)	300 to 400 (ft)	400 to 600 (ft)	600 to 800 (ft)	800 to 1000 (ft)	1000 to 1500 (ft)	1500 to 2000 (ft)
2	.154	.154	.154	.154	.154	.154		
3	.216	.216	.216	.216	.216	.216		
4	.237	.237	.237	.237	.237	.237	.237	.237
5	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.312	.312
12	.250	.250	.250	.250	.250	.250	.312	.312
14	.250	.250	.250	.250	.312	.312	.312	.312
16	.250	.250	.312	.312	.312	.312	.375	.375
18	.250	.312	.312	.312	.375	.375	.375	.438
20	.250	.312	.312	.312	.375	.375	.375	.438
22	.312	.312	.312	.375	.375	.375	.375	.438
24	.312	.312	.375	.375	.375	.438		
30	.312	.375	.375	.438	.438	.500		

Note: Minimum wall thickness is in inches.

9.2.4 Plastic and Other Non-metallic Casing.

9.2.4.1 Materials. PVC, SR, ABS, or other types of non-metallic well casing and screen may be installed in Utah upon obtaining permission of the well owner. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480-95, which are incorporated by reference to these rules. Casing and

screen meeting this standard is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-95, SDR-17 (or 13.5, 21, etc.)". All plastic casing and screen for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (NSF) standard 61. Other types of plastic casings and screens may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval and upon state engineer approval.

9.2.4.2 Minimum Wall Thickness and Depth Requirements. PVC well casing and screen with an outside diameter equal to or less than four and one half (4.5) inches shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 21 or a Schedule 40 designation. PVC well casing and screen with an outside diameter greater than four and one half (4.5) inches shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 17 or a Schedule 80 designation. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings. The depth at which plastic casing and screen is placed in a well shall conform to the minimum requirements and restrictions as outlined in ASTM Standard F-480-95.

9.2.4.3 Fiberglass Casing. Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by ANSI/NSF Standard 61 and upon state engineer approval.

9.2.4.4 Driving Non-metallic Casing. Non-metallic casing shall not be driven or dropped and may only be installed in an oversized borehole.

9.2.4.5 Protective Casing. If plastic or other non-metallic casing is utilized, the driller shall install a protective steel casing which complies with the provisions of Subsection 9.2.3 or an equivalent protective covering approved by the state engineer over and around the well casing at ground surface to a depth of at least two and one half (2.5) feet. If a pitless adapter is installed on the well, the bottom of the protective cover shall be placed above the pitless adapter/well connection. If the pitless adapter is placed in the protective casing, the protective casing shall extend below the pitless entrance in the well casing and be sealed both on the outside of the protective casing and between the protective casing and well casing. The protective cover shall be sealed in the borehole in accordance with the requirements of Subsection 9.4. The annular space between the protective cover and non-metallic casing shall also be sealed with acceptable materials in accordance with Subsection 9.4. A sanitary, weather-tight seal or a completely welded cap shall be placed on top of the protective cover, thus enclosing the well itself. If the sanitary seal is vented, screens shall be placed in the vent to prevent debris insects, and other animals from entering the well. This protective casing requirement does not apply to monitor wells. Figure 5 depicts this requirement.

9.3 Casing Joints.

9.3.1 General. All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

9.3.2 Steel Casing. All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint. Spot welding of joints is prohibited.

9.3.3 Plastic Casing. All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480-95. Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement.

9.4 Surface Seals and Interval Seals.

9.4.1 General. Before the drill rig is removed from the drill site of a well, a surface seal shall be installed. Well casings shall be sealed to prevent the possible downward movement of contaminated surface waters in the annular space around the well casing. The seal shall also prevent the upward movement of artesian waters within the annular space around the well casing. Depending upon hydrogeologic conditions around the well, interval seals may need to be installed to prevent the movement of groundwater either upward or downward around the well from zones that have been cased out of the well due to poor water quality or other reasons. The following surface and interval seal requirements apply equally to rotary drilled, cable tool drilled, bored, jetted, augered, and driven wells unless otherwise specified.

9.4.2 Seal Material.

9.4.2.1 General. The seal material shall consist of neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout as defined in Section R655-4-2. Use of sealing materials other than those listed above must be approved by the state engineer. Bentonite drilling fluid (drilling mud), dry drilling bentonite, or drill cuttings are not an acceptable sealing material. In no case shall drilling fluid (mud), drill cuttings, drill chips, or puddling clay be used, or allowed to fill, partially fill, or fall into the required sealing interval of a well during construction of the well. All hydrated sealing materials (neat cement grout, sand cement grout, bentonite grout) shall be placed by tremie pipe, pumping, or pressure from the bottom of the seal interval upwards in one continuous operation when placed below a depth of 30 feet or when placed below static groundwater level. Portland Cement grouts must be allowed to cure a minimum of 72 hours for Type I-II cement or 36 hours for Type III cement before well drilling, construction, or testing may be resumed. The volume of annular space in the seal interval shall be calculated by the driller to determine the estimated volume of seal material required to seal the annular space. The driller shall place at least the volume of material equal to the volume of annular space, thus ensuring that a continuous seal is placed. The driller shall maintain the well casing centered in the borehole during seal placement using centralizers or other means to ensure that the seal is placed radially and vertically continuous.

9.4.2.2 Bentonite Grout. Bentonite used to prepare grout for sealing shall have the ability to gel; not separate into water and solid materials after it gels; have a hydraulic conductivity or permeability value of 10E-7 centimeters per second or less; contain at least 20 percent solids by weight of bentonite, and have a fluid weight of 9.5 pounds per gallon or greater and be specifically designed for the purpose of sealing. Bentonite or polymer drilling fluid (mud) does not meet the definition of a grout with respect to density, gel strength, and solids content and shall not be used for sealing purposes. At no time shall bentonite grout contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite grout shall be prepared and installed according to the manufacturer's instructions and these rules. All additives must be certified by a recognized certification authority such as NSF and approved by the state engineer.

9.4.2.3 Unhydrated Bentonite. Unhydrated bentonite (e.g., granular, tabular, pelletized, or chip bentonite) may be used in the construction of well seals above a depth of 50 feet. Unhydrated bentonite can be placed below a depth of 50 feet when placed inside the annulus of two casings, when placed using a tremie pipe, or by using a placement method approved by the state engineer. The bentonite material shall be specifically designed for well sealing and be within industry tolerances. All unhydrated bentonite used for sealing must be free of organic polymers and other contamination. Placement of bentonite shall conform to the manufacturer's specifications and instructions and result in a seal free of voids or bridges. Granular or powdered bentonite shall not be placed under water by gravity feeding from the surface. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

9.4.3 Seal and Unperforated Casing Placement.

9.4.3.1 General Seal Requirements. Figure 1 illustrates the construction of a surface seal for a typical well. The surface seal must be placed in an annular space that has a minimum diameter of four (4) inches larger than the nominal size of the permanent well casing (This amounts to a 2-inch annulus). The surface seal must extend from land surface to a minimum depth of 30 feet. The completed surface seal must fully surround the permanent well casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil. In unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed, either a temporary surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the outermost permanent casing shall be utilized to ensure proper seal placement or the well driller shall notify the state engineer's office that the seal will be placed in a potentially unstable open borehole without a temporary surface casing by telephone or FAX in conjunction with the start card submittal in order to provide an opportunity for the state engineer's office to inspect the placement of the seal. If a temporary surface casing is utilized, the surface casing shall be removed in conjunction with the placement of the seal. Alternatively, conductor casing may be sealed permanently in place to a depth of 30 feet with a minimum 2-inch annular seal between the surface casing and borehole wall. If the temporary surface casing is to be removed, the surface casing shall be withdrawn as sealing material is placed between the outer-most permanent well casing and borehole wall. The sealing material shall be kept at a sufficient height above the bottom of the temporary surface casing as it is withdrawn to prevent caving of the borehole wall. If the temporary conductor casing is driven in place without a 2-inch annular seal between the surface casing and borehole wall, the surface casing may be left in place in the borehole only if it is impossible to remove because of unforeseen conditions and not because of inadequate drilling equipment, or if the removal will seriously jeopardize the integrity of the well and the integrity of subsurface barriers to pollutants or contaminant movement. The temporary surface casing can only be left in place without a sufficient 2-inch annular seal as describe above with the approval of the state engineer on a case by case basis. If the surface casing is left in place, it shall be perforated to allow seal material to penetrate through the casing and into the formation and annular space between the surface casing and borehole wall. Unhydrated bentonite shall not be used to construct the surface seal when the surface casing is left in place. Grout seal materials must be used to construct the surface seal when the surface casing is left in place. The grout must be placed with sufficient pressure to force the grout through the surface casing perforations and into the annular space between the surface casing and borehole wall and into the formation. Surface seals and unperforated casing shall be installed in wells located in unconsolidated formation such as sand and gravel with minor clay or confining units; unconsolidated formation consisting of stratified layers of materials such as sand, gravel, and clay or other confining units; and consolidated formations according to the following procedures.

9.4.3.2 Unconsolidated Formation without Significant Confining Units. This includes wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet. Permanent unperforated casing shall extend at least to a depth of 30 feet and also extend below the lowest anticipated pumping level. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 9.2 unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.3 Unconsolidated Formation with Significant Confining Units. This includes wells that penetrate an aquifer overlain by clay or other confining formations that are at least six (6) feet thick. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into the confining unit above the water bearing formation. Unperforated casing shall extend from ground surface to at least 30 feet and to the bottom of the confining unit overlying the water bearing formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 9.2 unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.4 Consolidated Formation. This includes drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into competent consolidated formation. Unperforated permanent casing shall be installed to extend to a depth of at least 30 feet and the lower part of the casing shall be driven and sealed at least five (5) feet into the consolidated formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 9.2 unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.5 Sealing Artesian Wells. Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone. If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage. The driller shall not move the drilling rig from the well site until leakage is completely stopped, unless authority for temporary removal of the drilling rig is granted by the state engineer, or when loss of life or property is imminent. If the well flows naturally at land surface due to artesian pressure, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times.

9.4.4 Interval Seals. Formations containing undesirable materials (e.g., fine sand and silt that can damage pumping equipment and result in turbid water), contaminated

groundwater, or poor quality groundwater must be sealed off so that the unfavorable formation cannot contribute to the performance and quality of the well. These zones must also be sealed to eliminate the potential of cross contamination or commingling between two aquifers of differing quality. Figure 4 illustrates this situation. Unless approved by the state engineer, construction of wells that cause the commingling or cross connection of otherwise separate aquifers is not allowed.

9.4.5 Other Sealing Methods. In wells where the above-described methods of well sealing do not apply, special sealing procedures can be approved by the state engineer upon written request by the licensed well driller.

9.5 Special Requirements for Oversized and Gravel Packed Wells. This section applies to wells in which casing is installed in an open borehole without driving or drilling in the casing and an annular space is left between the borehole wall and well casing (e.g., mud rotary wells, flooded reverse circulation wells, air rotary wells in open bedrock).

9.5.1 Oversized Borehole. The diameter of the borehole shall be at least four (4) inches larger than the outside diameter of the well casing to be installed to allow for proper placement of the gravel pack and/or formation stabilizer and adequate clearance for grouting and surface seal installations. In order to accept a smaller diameter casing in any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Subsection 9.4. In order to minimize the risk of: 1) borehole caving or collapse; 2) casing failure or collapse; or 3) axial distortion of the casing, it is recommended that the entire annular space in an oversized borehole between the casing and borehole wall be filled with formation stabilizer such as approved seal material, gravel pack, filter material or other state engineer-approved materials. Well casing placed in an oversized borehole should be suspended at the ground surface until all formation stabilizer material is placed in order to reduce axial distortion of the casing if it is allowed to rest on the bottom of an open oversized borehole. In order to accept a smaller diameter casing, the annular space in an oversized borehole penetrating unconsolidated formations (with no confining layer) must be sealed in accordance with Subsection 9.4 to a depth of at least 30 feet or from static water level to ground surface, whichever is deeper. The annular space in an oversized borehole penetrating stratified or consolidated formations must be sealed in accordance with Subsection 9.4 to a depth of at least 30 feet or five (5) feet into an impervious strata (e.g., clay) or competent consolidated formation overlying the water producing zones back to ground surface, whichever is deeper. Especially in the case of an oversized borehole, the requirements of Subsection 9.4.4 regarding interval sealing must be followed.

9.5.2 Gravel Pack or Filter Material. The gravel pack or filter material shall consist of clean, well-rounded, chemically stable grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well via the gravel pack, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water or dry hypochlorite mixed with the gravel pack at the surface before it is introduced into the well (see Table 6 of these rules for required amount of chlorine material).

9.5.3 Placement of Filter Material. All filter material shall be placed using a method that through common usage has been shown to minimize a) bridging of the material between the borehole and the casing, and b) excessive segregation of the material after it has been introduced into the annulus and before it settles into place. It is not acceptable to place filter material by pouring from the ground surface unless proper sounding devices are utilized to measure dynamic filter depth, evaluate pour rate, and minimize bridging and formation of voids.

9.5.4 No Surface Casing Used. If no permanent conductor casing is installed, neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite seal shall be installed in accordance with Subsection 9.4. Figure 2 of these rules illustrates the construction of a typical well of this type.

9.5.5 Permanent Conductor Casing Used. If permanent conductor casing is installed, it shall be unperforated and installed and sealed in accordance with Subsection 9.4 as depicted in Figure 3 of these rules. After the gravel pack has been installed between the conductor casing and the well casing, the annular space between the two casings shall be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite from at least 50 feet to the surface and in accordance with Subsection 9.4. If a hole will be created in the permanent conductor casing in order to install a pitless adapter into the well casing, the annual space between the conductor casing and well casing shall be sealed to at least a depth of thirty (30) feet with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite. A waterproof cap or weld ring sealing the two casings at the surface by itself without the annular seal between the two casings is unacceptable when a pitless adapter is installed in this fashion. Moreover in this case, the annular space between the surface casing and well casing must be at least 2 inches in order to facilitate seal placement.

9.5.6 Gravel Feed Pipe. If a gravel feed pipe, used to add gravel to the gravel pack after well completion, is installed, the diameter of the borehole in the sealing interval must be at least four (4) inches in diameter greater than the permanent casing plus the diameter of the gravel feed pipe. The gravel feed pipe must be completely surrounded by the seal. The gravel feed pipe must extend at least 18 inches above ground and must be sealed at the top with a watertight cap or plug (see Figure 2).

9.6 Protection of the Aquifer.

9.6.1 Drilling Fluids and LCMs. The well driller shall take due care to protect the producing aquifer from clogging or contamination. Organic substances shall not be introduced into the well or borehole during drilling or construction. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all drilling fluids, filter cake, and any other inorganic substances added to the drilling fluid that may seal or clog the aquifer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic, which can be safely broken down and removed from the borehole, may be utilized. This is especially important in the construction of wells designed to be used as a public water system supply.

9.6.2 Containment of Drilling Fluid. Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments. Rules regarding the discharges to waters of the state are promulgated under R317-8-2 of the Utah Administrative Code and regulated by the Utah Division of Water Quality (Tel. 801-536-6146). Pollution of waters of the state is a violation of the Utah Water Quality Act, Utah Code Annotated Title 19, Chapter 5.

9.6.3 Mineralized, Contaminated or Polluted Water. Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or co-mingling of the overlying or underlying groundwater zones will not occur (see Figure 4).

9.6.4 Drilling Equipment. All tools, drilling equipment, and materials used to drill a well shall be free of contaminants prior to beginning well construction. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed on drilling equipment be wiped clean prior to insertion into the borehole.

9.6.5 Well Disinfection and Chlorination of Water. No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give 100 parts per million free chlorine residual. Upon completion of a well or work on a well, the driller shall disinfect the well using accepted disinfection procedures to give 100 parts per million free chlorine residual equally distributed in the well water from static level to the bottom of the well. A chlorine solution designated for potable water use prepared with either calcium hypochlorite (powdered, granular, or tablet form) or sodium hypochlorite in liquid form shall be used for water well disinfection. Off-the-shelf chlorine compounds intended for home laundry use, pool or fountain use should not be used if they contain additives such as antifungal agents, silica ("Ultra" brands), scents, etc. Table 6 provides the amount of chlorine compound required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Disinfection situations not depicted in Table 6 must be approved by the state engineer. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 6
AMOUNT OF CHLORINE COMPOUND FOR EACH 100 FEET OF WATER STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	Ca-HyCLT* (25% HOCL) (ounces)	Ca-HyCLT (65% HOCL) (ounces)	Na-HyCLT** (12-trade %) (fluid ounces)	Liquid CL*** (100% Cl2) (lbs)
2	1.00	0.50	3.5	0.03
4	3.50	1.50	7.0	0.06
6	8.00	3.00	16.0	0.12
8	14.50	5.50	28.0	0.22
10	22.50	8.50	45.0	0.34
12	32.50	12.00	64.0	0.50
14	44.50	16.50	88.0	0.70
16	58.00	26.00	112	0.88
20	90.50	33.00	179	1.36
For every 100 gal. of water add:	5.50	2.00	11.5	0.09

NOTES: *Calcium Hypochlorite (solid)
**Sodium Hypochlorite (liquid)
***Liquid Chlorine

9.7 Special Requirements.

9.7.1 Explosives. Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed. If explosives are used in the construction of a well, their use shall be reported on the official well log. In no case shall explosives, other than explosive shot perforators specifically designed to perforate steel casing, be detonated inside the well casing or liner pipe.

9.7.2 Access Port. Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

9.7.3 Completion or Abandonment. A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Dry boreholes, or otherwise unsuccessful attempts at completing a well, shall be properly abandoned in accordance with Section R655-4-12. Upon completion, all wells shall be equipped with a watertight, tamper-resistant casing cap or sanitary seal.

9.7.4 Surface Security. If it becomes necessary for the driller to temporarily discontinue the drilling operation before completion of the well or otherwise leave the well or borehole unattended, the well and/or borehole must be covered securely to prevent contaminants from entering the casing or borehole and rendered secure against entry by children, vandals, domestic animals, and wildlife.

9.7.5 Pitless Adapters. Pitless adapters or units are acceptable to use with steel well casing as long as they are installed in accordance with manufacturers recommendations and specifications. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. Pitless adapters or units are not recommended to be mounted on PVC well casing. If a pitless adapter is to be used with PVC casing, it should be designed for use with PVC casing, and the driller should ensure that the weight of the pump and column do not exceed the strength of the PVC well casing.

9.7.6 Hydraulic Fracturing. The hydraulic fracturing pressure shall be transmitted through a drill string and shall not be transmitted to the well casing. Hydraulic fracturing intervals shall be at least 20 feet below the bottom of the permanent casing of a well. All hydraulic fracturing equipment shall be thoroughly disinfected with a 100 part per million chlorine solution prior to insertion into the well. The driller shall include the appropriate hydraulic fracturing information on the well log including methods, materials, maximum pressures, location of packers, and initial/final yields.

9.7.7 Static Water Level, Well Development, and Well Yield. To fulfill the requirements of Subsection R655-4-4.5.2, new wells designed to produce water shall be developed to remove drill cuttings, drilling mud, or other materials introduced into the well during construction and to restore the natural groundwater flow to the well to the extent possible. After a water production well is developed, a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Following development and testing, the static water level in the well should also be measured. Static water level, well development information, and well yield information shall be noted on the official submittal of the Well Log by the well driller.

R655-4-10. Special Wells.

10.1 Construction Standards for Special Wells.

10.1.1 General. The construction standards outlined in Section R655-4-9 are meant to serve as minimum acceptable construction standards. Certain types of wells such as cathodic protection wells, heating or cooling exchange wells, recharge and recovery wells, and public supply wells require special construction standards that are addressed in this section or in rules promulgated by other regulating agencies. At a minimum, when constructing special wells as listed above, the well shall be constructed by a licensed well driller, and the minimum construction standards of Section R655-4-9 shall be followed in addition to the following special standards.

10.1.2 Public Water Supply Wells. Public water supply wells are subject to the minimum construction standards outlined in Section R655-4-9 in addition to the requirements established by the Department of Environmental Quality, Division of Drinking Water under Rules R309-515 and R309-600. Plans and specifications for a public supply well must be reviewed and approved by the Division of Drinking Water before the well is drilled. These plans and specifications shall include the procedures, practices, and materials used to drill, construct, seal, develop, clean, disinfect, and test the public supply well. A Preliminary Evaluation Report describing the potential vulnerability and protection strategies of the new well

to contamination must also be submitted and approved prior to drilling. A representative of the Division of Drinking Water must be present at the time the surface grout seal is placed in all public supply wells, so that the placement of the seal can be certified. In order to assure that a representative will be available, and to avoid down-time waiting for a representative, notice should be given several days in advance of the projected surface grout seal placement. When the time and date for the surface grout seal installation are confirmed a definite appointment should be made with the representative of the Division of Drinking Water to witness the grout seal placement by calling (801) 536-4200. The licensed driller shall have available a copy of the start card relating to the well and provide that information to the inspecting representative at the time of the surface grout seal installation and inspection.

10.1.3 Cathodic Protection Well Construction. Cathodic protection wells shall be constructed in accordance with the casing, joint, surface seal, and other applicable requirements outlined in Section R655-4-9. Any annular space existing between the base of the annular surface seal and the top of the anode and conductive fill interval shall be filled with appropriate fill or sealing material. Fill material shall consist of washed granular material such as sand, pea gravel, or sealing material. Fill material shall not be subject to decomposition or consolidation and shall be free of pollutants and contaminants. Fill material shall not be toxic or contain drill cuttings or drilling mud. Additional sealing material shall be placed below the minimum depth of the annular surface seal, as needed, to prevent the cross-connection and commingling of separate aquifers and water bearing zones. Vent pipes, anode access tubing, and any other tubular materials (i.e., the outermost casing) that pass through the interval to be filled and sealed are considered casing for the purposes of these standards and shall meet the requirements of Subsections R655-4-9.2 and 9.3. Cathodic protection well casing shall be at least 2 inches in internal diameter to facilitate eventual well abandonment. Figure 6 illustrates the construction of a typical cathodic protection well.

10.1.4 Heating/Cooling Exchange Wells. Wells or boreholes utilized for heat exchange or thermal heating, which are greater than 30 feet in depth and encounter formations containing groundwater, must be drilled by a licensed driller and the owner or applicant must have an approved application for that specific purpose as outlined in Section R655-4-7. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards of Section R655-4-9. For closed-loop systems where groundwater is not removed in the process, non-production well approval must be obtained from the state engineer. Closed-loop system wells must be sealed from the bottom of the well/boring to ground surface using acceptable materials and placement methods described in Section 9.4. Sand may be added to the seal mix to enhance thermal conductivity as long as the seal mix meets permeability and gel strength standards outlined in Section 9.4. For open-loop systems where groundwater is removed, processed, and re-injected, a non-consumptive use water right approval must be obtained from the state engineer. Open-loop system wells shall be constructed in accordance with the requirements found in Section 9. If a separate well or borehole is required for re-injection purposes, it must also comply with these standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection. The rules herein pertain only to the heating and cooling exchange well constructed to a depth greater than 30 feet and are not intended to regulate the incidental work that may occur up to the well such as plumbing, electrical, piping, trenching, and backfilling activities.

10.1.5 Recharge and Recovery Wells. Any well drilled under the provisions of Title 73, Chapter 3b (Groundwater Recharge and Recovery Act) shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller. Special rules regarding the injection of water into the ground are also promulgated under the jurisdiction of the Utah Department of Environmental Quality, Division of Water Quality (Rule R317-7 "Underground Injection Control Program" of the Utah Administrative Code) and must be followed in conjunction with the Water Well Drilling rules.

R655-4-11. Deepening, Rehabilitation, and Renovation of Wells.

11.1 Sealing of Casing.

11.1.1 If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased and resealed in accordance with the rules provided in Subsection R655-4-9(9.4).

11.2 Inner Casing.

11.2.1 If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings.

11.3 Outer Casing.

11.3.1 If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Subsection R655-4-9(9.4).

11.4 Artesian Wells.

11.4.1 If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Subsection R655-4-9(9.4).

11.5 Drilling in a Dug Well.

11.5.1 A drilled well may be constructed through an existing dug well provided that:

11.5.1.1 Unperforated Casing Requirements. An unperforated section of well casing extends from a depth of at least ten (10) feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well.

11.5.1.2 Seal Required. A two foot thick seal of neat cement grout, sand cement grout, or bentonite grout is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well.

11.5.1.3 Test of Seal. The drilled well shall be pumped or bailed to determine whether the seal described in Subsection R655-4-11(11.5.1.2) is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained.

11.6 Well Rehabilitation and Cleaning.

11.6.1 Tools used to rehabilitate or clean a well shall be cleaned, disinfected, and free of contamination prior to placement in a well.

11.6.2 The driller shall use rehabilitation and cleaning tools properly so as not to permanently damage the well or aquifer. If the surface seal is damaged or destroyed in the process of rehabilitation or cleaning, the driller shall repair the surface seal to the standards set forth in Subsection R655-4-9(9.4).

11.6.3 Debris, sediment, and other materials displaced inside the well and surrounding aquifer as a result of rehabilitation or cleaning shall be completely removed by pumping, bailing, well development, or other approved methods.

11.6.4 Detergents, chlorine, acids, or other chemicals placed in wells for the purpose of increasing or restoring yield, shall be specifically designed for that purpose and used according to the manufacturer's recommendations.

11.6.5 Any renovation, rehabilitation, cleaning, or other work on a well that requires alteration of the well itself shall be conducted by a licensed well driller.

11.6.6 Following completion of deepening, renovation, rehabilitation, cleaning, or other work on a well, the well shall be properly disinfected in accordance with Subsection R655-4-9(9.6.5).

R655-4-12. Abandonment of Wells.

12.1 Temporary Abandonment.

12.1.1 When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If a well is in the process of being drilled and is temporarily abandoned, the well shall be sealed with a tamper resistant, water-tight cap or seal and a surface seal installed in accordance with Subsection R655-4-9(9.4). The well may be temporarily abandoned during construction for a maximum of 90 days. After the 90 day period, the temporarily abandoned well shall be completed as a well that meets the standards of Section 9 or permanently abandoned in accordance with the following requirements, and an official well abandonment report (abandonment log) must be submitted in compliance with Section R655-4-4.

12.2 Permanent Abandonment.

12.2.1 The rules of this section apply to the abandonment of the type of wells listed in Subsection R655-4-1(1.2) including private water wells, public supply wells, monitor wells, cathodic protection wells, and heating or cooling exchange wells. A licensed driller shall notify the state engineer prior to commencing abandonment work and submit a complete and accurate abandonment log following abandonment work in accordance with Section R655-4-4 of these rules. Prior to commencing abandonment work, the driller shall obtain a copy of the well log of the well proposed to be abandoned from the well owner or the state engineer, if available, in order to determine the proper abandonment procedure. Any well that is to be permanently abandoned shall be completely filled in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply. A well driller who wishes to abandon a well in a manner that does not comply with the provisions set forth in this section must request approval from the state engineer.

12.3 License Required.

12.3.1 Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used.

12.4 Acceptable Materials.

12.4.1 Neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout shall be used to abandon wells and boreholes. Other sealing materials or additives, such as fly ash, may be used in the preparation of grout upon approval of the state engineer. Drilling mud or drill cuttings shall not be used as any part of a sealing materials for well abandonment. The liquid phase of the abandonment fluid shall be water from a potable municipal system or disinfected in accordance with Subsection R655-4-9(9.6.5).

12.5 Placement of Materials.

12.5.1 Neat cement and sand cement grout shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. The sealing material shall be placed by the use of a grout pipe, tremie line, dump bailer or equivalent in order to avoid freefall, bridging, or dilution of the sealing materials or separation of aggregates from sealants. Sealing material shall not be installed by freefall (gravity) unless the interval to be sealed is dry and no deeper than 30 feet below ground surface. If the well to be abandoned is a flowing artesian well, the well may be pressure grouted from the surface. The well should be capped immediately after placement of seal materials to allow the seal material to set up and not flow out of the well.

12.5.2 Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

12.5.3 The uppermost ten (10) feet of the abandoned well casing or borehole shall consist of neat cement grout or sand cement grout.

12.5.4 Abandonment materials placed opposite any non-water bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process.

12.5.5 Prior to well or borehole abandonment, all pump equipment, piping, and other debris shall be removed to the extent possible. The well shall also be sounded immediately before it is plugged to make sure that no obstructions exist that will interfere with the filling and sealing. If the well contains lubricating oil that has leaked from a turbine shaft pump, it shall be removed from the well prior to abandonment and disposed of in accordance with applicable state and federal regulations.

12.5.6 Verification shall be made that the volume of sealing and fill material placed in a well during abandonment operations equals or exceeds the volume of the well or borehole to be filled and sealed.

12.6 Termination of Casing.

12.6.1 The casings of wells to be abandoned shall be severed a minimum of two feet below either the natural ground surface adjacent to the well or at the collar of the hole, whichever is the lower elevation. A minimum of two (2) feet of compacted native material shall be placed above the abandoned well upon completion.

12.7 Abandonment of Artesian Wells.

12.7.1 A neat cement grout, sand-cement grout, or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with sand-cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten (10) feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.8 Abandonment of Drilled and Jetted Wells.

12.8.1 A neat cement grout or sand cement grout plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or bentonite slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.9 Abandonment of Gravel Packed Wells.

12.9.1 All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.10 Removal of Casing.

12.10.1 It is recommended that the well casing be removed during well abandonment, and when doing so, the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. In

the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.11 Replacement Wells.

12.11.1 Wells which are to be removed from operation and replaced by the drilling of a new well under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Section R655-4-12 before the rig is removed from the site of the newly constructed replacement well, unless written authorization to remove the rig without abandonment is provided by the state engineer. Also refer to the requirements provided in Subsection R655-4-4(4.4).

12.12 Abandonment of Cathodic Protection Wells.

12.12.1 The general requirements for permanent well abandonment in accordance with Section R655-4-12 shall be followed for the abandonment of cathodic protection wells.

12.12.2 A cathodic protection well shall be investigated before it is destroyed to determine its condition, details of its construction and whether conditions exist that will interfere with filling and sealing.

12.12.3 Casing, cables, anodes, granular backfill, conductive backfill, and sealing material shall be removed as needed, by re-drilling, if necessary, to the point needed to allow proper placement of abandonment material. Casing that cannot be removed shall be adequately perforated or punctured at specific intervals to allow pressure injection of sealing materials into granular backfill and all other voids that require sealing.

R655-4-13. Monitor Well Construction Standards.

13.1 Scope.

13.1.1 Certain construction standards that apply to water wells also apply to monitor wells. Therefore, these monitoring well standards refer frequently to the water well standard sections of the rules. Standards that apply only to monitor wells, or that require emphasis, are discussed in this section. Figure 7 illustrates a schematic of an acceptable monitor well with an above-ground surface completion. Figure 8 illustrates a schematic of an acceptable monitor well with a flush-mount surface completion. Figures 7 and 8 can be viewed in the publication, State of Utah Administrative Rules for Water Well Drillers, dated January 1, 2001, available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah.

13.1.2 These standards are not intended as a complete manual for monitoring well construction, alteration, maintenance, and abandonment. These standards serve only as minimum statewide guidelines towards ensuring that monitor wells do not constitute a significant pathway for the movement of poor quality water, pollutants, or contaminants. These standards provide no assurance that a monitor well will perform a desired function. Ultimate responsibility for the design and performance of a monitoring well rests with the well owner and/or the owner's contractor, and/or technical representative(s). Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

13.2 Installation and Construction.

13.2.1 Materials and Equipment Contaminant-Free. All material used in the installation of monitor wells shall be contaminant-free when placed in the ground. Drilling equipment shall be clean and contaminant free in accordance with Subsection R655-4-9(9.6.4). During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones.

13.2.2 Borehole Integrity. Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded from permanent cross connection.

13.2.3 Casing and Screen. The well casing should be perforated or screened and filter packed with sand or gravel where necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The casing and screen selected shall not affect or interfere with the chemical, physical, radiological, or biological constituents of interest. Screens in the same well shall not be placed across separate water bearing zones in order to minimize interconnection, aquifer commingling, and cross contamination. Screens in a nested well can be placed in separate water bearing zones as long as the intervals between the water bearing zones are appropriately sealed and aquifer cross connection and commingling does not occur. Monitor well casing and screen shall conform to ASTM standards, or consist of at least 304 or 316 stainless steel, PTFE (Teflon), or Schedule 40 PVC casing.

13.2.4 Gravel/Filter Pack. If installed, the gravel or filter pack should generally extend two (2) feet to ten (10) feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Gravel or filter pack material shall meet the requirements of Subsection R655-4-9(9.5.2). Gravel/filter pack for monitoring wells does not require disinfection. Drill cutting should not be placed into the open borehole annulus. The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the gravel pack by means of a sounding device or other mechanism.

13.2.5 Annular Seal. All monitor wells constructed shall have a continuous surface seal, which seals the annular space between the borehole and the permanent casing, in accordance with the provisions in Section R655-4-9. The surface seal depth requirements of Section R655-4-9 do not apply to monitor wells. The surface seal may be more or less than 50 feet depending on the screen/perforation and/or gravel pack interval. Seals shall also be constructed to prevent interconnection and commingling of separate aquifers penetrated by the well, prevent migration of surface water and contaminations into the well and aquifers, and shall provide casing stability. The seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. After the permanent casing and filter pack (optional) has been set in final position, a layer of bentonite or fine sand (e.g., mortar sand) shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval in order to insure that the seal placement will not interfere with the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with unhydrated bentonite, neat cement grout, sand-cement grout, or bentonite grout. Only potable water should be used to hydrate any grout or slurry mixture. The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the

permanent casing to undisturbed or recompacted soil. All sealing materials and placement methods shall conform to the standards in Section R655-4-2 and Subsection R655-4-9(9.4). The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the seal.

13.2.6 Cuttings, Decon Water, Development Water, and Other IDW. Drill cuttings, decontamination (Decon) water, monitor well development water, and other investigation derived waste (IDW) shall be managed and disposed of in accordance with applicable state and federal environmental regulations. It is the responsibility of the driller to know and understand such requirements.

13.3 Minimum Surface Protection Requirements.

13.3.1 If a well is cased with metal and completed above ground surface, a locking water resistant cap shall be installed on the top of the well.

13.3.2 If the well is not cased with metal and completed above ground surface, a protective metal casing shall be installed over and around the well. The protective casing shall be cemented at least two feet into the ground around the nonmetallic casing. A water tight cap shall be installed in the top of the well casing. A locking cap shall be installed on the top of the protective casing.

13.3.3 Monitor wells completed above ground and potentially accessible to vehicular damage shall be protected in the following manner. At least three metal posts, at least three inches in diameter, shall be cemented in place around the casing. Each post shall extend at least three feet above and two feet below ground surface. A concrete pad may be installed to add protection to the surface completion. If installed, the concrete pad shall be at least four (4) inches thick and shall slope to drain away from the well casing. The base shall extend at least two (2) feet laterally in all directions from the outside of the well boring. When a concrete pad is used, the well seal may be part of the concrete pad.

13.3.4 If the well is completed below land surface, a water tight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The monument and cover must be designed to withstand the maximum expected load.

13.4 Abandonment.

13.4.1 Abandonment of monitor wells shall be completed in compliance with the provisions of Section R655-4-12. The provisions of Section R655-4-12 are not required for the permanent abandonment of monitor wells completed at a depth of 30 feet below natural ground surface.

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R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Live decoys" means tame or captive ducks, geese or other live birds.

(d) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(e) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(f) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(g) "Transport" means to ship, export, import or receive or deliver for shipment.

(h) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(i) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-22.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-9. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake, Topaz Slough;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

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

R657-9-12. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-13. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-16. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date

such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) Dogs may be used to locate and retrieve migratory game birds 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.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-30. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Brown's Park - That part adjacent to headquarters.

(b) Clear Lake - Spring Lake.

(c) Desert Lake - That part known as "Desert Lake."

(d) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(g) Salt Creek - That part as posted known as "Rest Lake."

(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(j) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(k) Great Salt Lake Marina and adjacent areas as posted.

(l) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(h) "Limited entry hunt" means any hunt listed in the hunt tables of the proclamation of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(i) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(j) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(k) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(l) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Purchase of Permit by Mail.

(1) A person may obtain a cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, proof of valid hunting or combination license or the corresponding fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader 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 and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-10. 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 weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue

a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in proclamation of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the proclamation of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-34 and 657-10-35.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

R657-10-25. Cougar Pursuit.

(1) Cougar may be pursued only by persons who have obtained a valid cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection 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 or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

(6) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. Limited Entry Cougar Permit Application Information.

(1) Limited entry cougar permits are issued pursuant to R657-62-23.

R657-10-27. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

R657-10-28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that unit is met; or

(b) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-30. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or

aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-31. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-32. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more that 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

KEY: wildlife, cougar, game laws
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Notice of Continuation August 21, 2006 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-11. Taking Furbearers.
R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking furbearers.

R657-11-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device. Bait must be placed inside the artificial cubby set at least eight inches from the opening. Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(b) "Bait" means any lure containing animal parts larger than one cubic inch, or eight cubic inches if used in an artificial cubby set, with the exception of white-bleached bones with no hide or flesh attached.

(c) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(d) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(e) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(f) "Green pelt" means the untanned hide or skin of any furbearer.

(g) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(h) "Scent" means any lure composed of material of less than one cubic inch.

R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid, current furbearer license may take furbearers during the established furbearer seasons published in the proclamation of the Wildlife Board for taking furbearers.

(2) A person who has a valid, current furbearer license and valid bobcat permits may take bobcat during the established bobcat season published in the proclamation of the Wildlife Board for taking furbearers.

(3) A person who has a valid, current furbearer license and valid marten trapping permit may take marten during the established marten season published in the proclamation of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

R657-11-4. Bobcat Permits.

(1) Bobcat permits are only valid with a valid, current furbearer license.

(2) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board. Permit numbers shall be published in the proclamation of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the proclamation of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-5. Tagging Bobcats.

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

R657-11-6. Marten Permits.

(1) A person may not trap marten or have marten in possession without having a valid, current furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

(3)(a) Applications for marten permits must contain the applicant's full name, mailing address, phone number, and valid, current furbearer license number.

(b) Permit applications are accepted by mail or in person at any regional division office.

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the Saturday following the close of the bobcat trapping season and marten seasons;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(b) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the proclamation of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;
(b) Ogden - Regional Office;
(c) Price - Regional Office;
(d) Salt Lake City - Salt Lake Office;
(e) Springville - Regional Office; and
(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the fur harvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the fur harvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;
(b) location of kill;
(c) species and sex of animal being transported;
(d) origin and destination of such transportation;
(e) the signature and furbearer license number of the fur harvester;
(f) the name of the individual transporting the bobcat or marten; and
(g) the fur harvester's marten permit number if marten is

being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Fur harvesters taking marten are requested to present the entire skinned carcass intact, including the lower jaw, to the division in good condition when the pelt is presented for tagging.

(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.

R657-11-8. Purchase of License by Mail.

A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of furharvester education certification, and fees.

R657-11-9. Trap Registration Numbers.

(1) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(2) Each trapping device used to take furbearers must be permanently marked or tagged with the trap registered number of the owner.

(3) No more than one trap registration number may be on a trapping device.

(4) Trap registration numbers must be legible.

(5) Trap registration numbers are permanent and may be obtained by mail or in person from any division office.

(6) Applicants must include their full name, including middle initial, and complete home address.

(7) A registration fee of $10 must accompany the request. This fee is payable only once.

(8) Each individual is issued only one trap registration number.

(9) Any person who has obtained a trap registration number must notify the division within 30 days of any change in address or the theft of traps.

R657-11-10. Traps.

(1) All long spring, jump, or coil spring traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

(a) rubber-padded jaw traps,

(b) traps with jaw spreads less than 4.25 inches, and

(c) traps that are not completely submerged under water when set.

(2) All snares, except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop. Breakaway snares must be fastened to an immovable object solidly secured to the ground. The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; and the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set leg hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded leg hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land snares equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties; or

(c) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) as provided in Subsection (6).

(6) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(7) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid, current furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

(i) date written authorization was obtained;

(ii) name and address of the owner;

(iii) owner's trap registration number;

(iv) the name of the individual being given authorization;

(v) signature of owner.

(8) The owner of any trapping device, providing written authorization to another person under Subsection (6), shall be strictly liable for any violations of this proclamation resulting from the use of the trapping device by the authorized person.

(9) The owner of any trapping device, providing written authorization to another person under Subsection (6), must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(10)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(11) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(12) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(13) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally,

(b) drowning sets, and

(c) lethal snares that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immoveable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

R657-11-11. Use of Bait.

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) A person using bait is responsible if it becomes exposed for any reason.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

R657-11-12. Accidental Trapping.

(1)(a) Any bear, bobcat, cougar, fisher, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Written permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

R657-11-13. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats, may be taken by any means, excluding explosives, poisons, and crossbows, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-11-14. Spotlighting.

(1) Except as provided in Subsection (3):

(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 weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in his official capacity under a memorandum of agreement with the division.

R657-11-15. Use of Dogs.

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-11-16. State Parks.

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on 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 and archery equipment is prohibited within one quarter mile of the above stated areas.

R657-11-17. Transporting Furbearers.

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

R657-11-18. Exporting Furbearers from Utah.

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

R657-11-19. Sales.

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

R657-11-20. Wasting Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

R657-11-21. Depredation by Badger, Weasel, and Spotted Skunk.

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

R657-11-22. Depredation by Bobcat.

(1) Depredating bobcats may be taken at any time by duly appointed animal damage control agents, supervised by the animal damage control program, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

R657-11-23. Depredation by Beaver.

(1) Beaver doing damage may be taken or removed during closed seasons.

(2) A permit to remove damaging beaver must first be obtained from a division office or conservation officer.

R657-11-24. Survey.

Each permittee who is contacted for a survey about their furbearer harvesting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-11-25. Prohibited Species.

(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.

R657-11-26. Season Dates and Bag Limits.

Season dates, bag limits, and areas with special restrictions are published annually in the proclamation of the Wildlife Board for taking furbearers.

R657-11-27. Applications for Trapping on State Waterfowl Management Areas.

(1) Applications for trapping on state waterfowl management areas are available from the division offices, and from waterfowl management superintendents.

(2) Applications must be received in the mail no later than 5 p.m. on the date published in the proclamation of the Wildlife Board for taking furbearers. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking furbearers will be rejected.

(3) Application must be sent to the Wildlife Management section in the Salt Lake division office.

(4)(a) Trappers may apply for only one permit on only one management area in any 12 month period.

(b) Up to three trappers may apply as a group for a single permit.

(c) None of the group applicants may apply for any other area.

(5)(a) Only the trapper or trappers specified on the application may trap on the waterfowl management area.

(b) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.

(6) Areas open to trapping, trapping fees, and number of permits for individual areas are available at division offices or by contacting the waterfowl management area superintendents during the application period.

(7)(a) If the number of applications received exceeds the number of permits available, a drawing will be held. Applicants shall be notified by mail of drawing results.

(b) This drawing will determine successful applicants and alternates.

(8) Trapping dates and species that may be trapped shall be determined by the waterfowl management area superintendent.

(9) All trappers must trap under the supervision of the waterfowl management area superintendent.

R657-11-28. Fees.

(1) Upon payment of trapping fees, successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within ten days after the drawing, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

R657-11-29. Vehicle Travel.

Vehicle travel is restricted to developed roads. However,

written permission for other travel may be obtained from the waterfowl management area superintendent.

R657-11-30. Trapping Hours.

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

R657-11-31. Responsibility of Trappers.

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

R657-11-32. Closed Area.

Davis County - Trapping is allowed only on the dates published in the proclamation of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

R657-11-33. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.

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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 for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be

accompanied by the blind, upper extremity disabled or quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer, Elk and Wild Turkey Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer, elk or wild turkey 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.

(d) The extended general wild turkey season may occur during the following dates;

(i) April 2 through April 4 2010;

(ii) April 1 through April 3 2011; and

(iii) March 30 through April 1 2012.

(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
October 22, 2009 23-20-12
Notice of Continuation September 10, 2007 63G-3-201

R657. Natural Resources, Wildlife Resources.
R657-39. Wildlife Board and Regional Advisory Councils.
R657-39-1. Purpose and Authority.

This rule is established under the authority of Sections 23-14-2, 23-14-2.6(7), 23-14-3, and 23 -14-19 to provide the standards and procedures for the operation of the Wildlife Board and regional advisory councils.

R657-39-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Anchor location" means the physical location from which:

(i) an electronic meeting originates; or

(ii) the participants are connected.

(b) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

R657-39-3. Regional Advisory Council Memberships -- Terms of Office.

(1)(a) There are created five regional advisory councils which shall consist of at least 12 members and not more than 15 members each from the wildlife region whose boundaries are established for administrative purposes by the division.

(b) Regional advisory councils shall be established as follows:

(i) two members who represent agriculture;

(ii) two members who represent sportsman;

(iii) two members who represent nonconsumptive wildlife;

(iv) one member who represents locally elected public officials;

(v) one member who represents the U.S. Forest Service;

(vi) one member who represents the Bureau of Land Management;

(vii) one member who represents Native Americans where appropriate; and

(viii) two members of the public at large who represent the interests of the region.

(c) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint additional members to the councils, up to a total of 15 per region, if deemed necessary to provide adequate representation of local interests and needs.

(d) Members of the councils shall serve a term of four years, except members may be appointed for a term of two years to ensure that the terms of office are staggered.

(e) Members may serve no more than two terms, except:

(i) members representing Native Americans may serve unlimited terms;

(ii) members filling a vacancy under Subsection (3) for two years or less will not be credited with having served a term; and

(iii) members who have served two terms may be eligible to serve an additional two terms after four years absence from regional advisory council membership.

(f) Members' terms expire on July 1 of the final year in the appointed term.

(2) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, may remove members of the councils from office for cause, but may not do so without a public hearing if requested by the member.

(3) If a vacancy occurs, the executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint a replacement to serve the remainder of the term from a list of nominees submitted by the respective interest group, agency, or the public at large.

(4)(a) Each council shall appoint:

(i) a chair to conduct meetings and present council recommendations to the Wildlife Board; and

(ii) a vice chair to conduct meetings in the absence of the chair.

(b) The chair and vice chair shall serve for a two year term of office, the regional advisory council may re-appoint the chair and vice chair to serve a second two year term.

(i) neither the chair nor the vice chair may serve more than two term.

(5) Regional supervisors of the division shall serve as executive secretary to the councils and shall provide administrative support.

(6) Each new member shall attend an orientation course provided by the division to assist them in the performance of the duties of the their office.

(7) Any member who fails to attend two consecutive, previously scheduled meetings without contacting the chair shall be considered to have resigned and shall be replaced as provided in this section.

R657-39-4. Regional Advisory Council Meetings.

(1) Meeting dates and times may be proposed by the Division of Wildlife Resources, but shall be determined by the chair upon at least ten days notice or upon shorter notice in emergency situations.

(2) Meeting locations may be proposed by the Division of Wildlife Resources, but shall be determined by the chair and must be held within the council's regional boundary.

(3) Meetings should be conducted in accordance with Robert's Rules of Order.

(4)(a) Each council shall provide not less than 24 hours' public notice of the agenda, date, time, and place of each of its meetings.

(b) Public notice is satisfied by:

(i) posting written notice at the regional division office; and

(ii) providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the council, or to a local media correspondent.

(c) When because of unforeseen circumstances it is necessary for a council to consider matters of an emergency or urgent nature, the notice requirements in this section may be disregarded and the best notice practicable given. No such meeting shall be held unless an attempt has been made to notify all of its members and a majority votes in the affirmative to hold the meeting.

(5) No formal decisions or recommendations may be made at any meeting unless there is a quorum present consisting of a simple majority of the membership of the council.

(6) Written minutes shall be kept of all council meetings pursuant to Section 52-4-7. Such minutes shall include:

(a) the date, time and place of the meeting;

(b) the names of members present and absent;

(c) the substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken;

(d) the names of all citizens who appeared and the substance in brief of their testimony;

(e) any other information that any member requests be entered into the minutes.

(7)(a) All council meetings shall be open to the public except that a council may hold a closed meeting as authorized in Utah Code Sections 52-4-4 and 52-4-5.

(b) A record of all closed meetings shall be kept and maintained consistent with Utah Code Section 52- 4-7.5.

R657-39-5. Regional Advisory Council Recommendations.

(1) Each council shall:

(a) hear broad input, including recommendations,

biological data, and information regarding the effects of wildlife;

(b) gather information from staff, the public, and government agencies; and

(c) make recommendations to the Wildlife Board in an advisory capacity.

(2) The chair of each council or his or her designee shall submit a written recommendation to the Wildlife Board and present its recommendations orally to the Wildlife Board during an open public meeting.

(3) Councils may not make formal recommendations to the Wildlife Board concerning the internal policies and procedures of the division, personnel matters, or expenditure of the division's budget.

R657-39-6. Wildlife Board Electronic Meetings.

(1) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Wildlife Board meetings by electronic means.

(2) The following provisions govern any meeting at which one or more Wildlife Board members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the board members participating in the meeting electronically and how they will be connected to the meeting;

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice Website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a board member appearing electronically or telephonically, any board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board.

(i) At the commencement of the meeting, or at such time as any board member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R657-39-7. Wildlife Board Emergency Meetings.

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Sections 52-4-202(1) cannot be met. Pursuant to Section 52-4-202(5), the notice requirements in Section 52-4-202(1) may be disregarded when unforseen circumstances require the wildlife board to meet and consider matters of an emergency or urgent nature.

(2) The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the board of the proposed meeting and a majority of the convened members vote in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Posting of the date, time, and place of the meeting and the topics to be considered:

(A) at the offices of the division;

(B) on the division's web page; and

(C) at the location where the emergency meeting will be held.

(ii) If members of the board appear electronically or telephonically, notice shall comply with the requirements of R657-39-6(2) to the extent practicable.

(c) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-202 could not be followed.

KEY: terms of office, public meetings, regional advisory councils

October 22, 2009 23-14-2.6(7)

Notice of Continuation January 9, 2006 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-50. Error Remedy.
R657-50-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-19, 23-19-1, and 23-19-38 this rule is established to provide guidelines for identifying and resolving errors involving:

(a) rejection of a wildlife document application;

(b) denial of a wildlife document;

(c) incorrect issuance of a wildlife document;

(d) applying for or receiving a wildlife document;

(e) eligibility to apply for or receive a wildlife document; or

(f) loss or forfeiture of bonus points.

(2) This rule provides standards and procedures in the identification and resolution of division errors, third party errors and applicant errors.

(3) Nothing in this Section shall be construed, however, as authorizing the Division to remedy or otherwise alter wildlife document ineligibility resulting from a judicial or administrative order suspending wildlife document privileges.

R657-50-2. Policy.

(1)(a) The division receives hundreds of thousands of applications and issues tens of thousands of wildlife documents each year through a variety of distribution methods, including:

(i) drawings;

(ii) over-the-counter sales;

(iii) license agent sales; and

(iv) online sales.

(b) The application procedures and eligibility requirements for wildlife documents are set forth in Utah Code, Title 23, and Utah Administrative Code Rules, Title R657.

(c) The public must comply with the procedures and requirements set forth in the statutes and rules identified in Subsection (1)(b).

(d) The division recognizes, however, that errors may be made by the division and other parties in eligibility, requesting, processing and issuing wildlife documents, including forfeiture of bonus points. Therefore, procedures are needed for evaluation, identification and resolution of errors.

(2)(a) The division may notify petitioners of rejection status for wildlife document applications completed incorrectly as provided under the applicable application correction procedures set forth in the respective statutes and rules identified in Subsection (1)(b).

(b) The division may use the data on file to correct rejection status applications. Ultimately, however, it is the responsibility of the applicant to provide all necessary information as required on the application.

(3)(a) Consistent with the requirements in this rule, the division may mitigate division, third party, and applicant errors when issuing wildlife documents or determining bonus points by:

(i) extending a deadline;

(ii) issuing a refund consistent with Sections 23-19-38 and 23-19-38.2;

(iii) issuing the correct wildlife document;

(iv) authorizing an incorrectly issued wildlife document;

(v) restoring forfeited bonus or preference points; or

(vi) accepting the surrender of a wildlife document and restoring applicable bonus or preference points as authorized in R657-42-4.

(b) Any mitigation efforts shall be subject to the division's determination that the applicant shall not receive an unfair benefit from the mitigation.

(c) The division may not mitigate errors caused in whole or part by the applicant's knowing and willful violation of statute, rule or proclamation.

(d) This rule applies only to errors adversely effecting an applicant that cannot be remedied through compliance with existing processes and procedures set in statute, rule or proclamation.

(e) The division may refund any fee collected in error.

R657-50-3. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2, and the applicable rules as provided in Section R657-50-1(b).

(2) In addition:

(a) "Applicant" means the person directly impacted by an error adversely affecting the opportunity to obtain or use a wildlife document.

(b)(i) "Applicant error" means the applicant inadvertently or negligently fails to comply with the procedures and requirements to become eligible for, apply for, or obtain a wildlife document.

(ii) "Applicant error" includes the negligent acts and omissions committed by an individual or entity acting in the applicant's behalf.

(iii) "Applicant error" does not include knowing and willful noncompliance with division procedures and requirements by the applicant or any individual or entity acting in his or her behalf.

(c) "Application" means a request made by the applicant to receive a wildlife document whether through a drawing, license agent, division employee, or online application.

(d)(i) "Division error" means the division or its agent:

(A) provides erroneous information to the applicant, which the applicant relies upon to his or her detriment in obtaining, or attempting to obtain a wildlife document;

(B) fails to provide information to the applicant required by law, policy, practice, or circumstance that directly leads to the applicant's ineligibility, inability, or failure to apply for or receive a wildlife document;

(C) erroneously rejects a properly completed and accurate wildlife document application;

(D) incorrectly issues a wildlife document;

(E) incorrectly denies issuing a wildlife document; or

(F) experiences a computer, online, or other electronic systems failure that prevents an applicant from applying for or obtaining a wildlife document.

(ii) "Division error" does not include any error made by the division or its agents acting in reliance upon inaccurate or false information provided by the applicant or any other individual acting in the applicant's behalf.

(e) "Error Committee" means a committee established by the Director consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees.

(f) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(g) "Landowner association operator error" means a landowner association operator whose error or mistake results in an incorrect voucher redemption.

(h) "Rejection status" means the application will not be considered for a wildlife document due to:

(i) an applicant error on the application;

(ii) the application lacking required information; or

(iii) the applicant does not meet a specific requirement.

(i) "Third party error" means the applicant is prepared and capable of or has satisfied the procedures and requirements for obtaining a wildlife document, but the opportunity is lost due to an error by computer service, internet provider, mail carrier

services or financial institutions.

(j) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit or a limited entry landowner permit from a division office.

(k) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-50-4. Division Error Procedures.

(1) A division error, which results in the rejection or incorrect processing of an application to obtain a wildlife document through a drawing, may be handled as provided in Subsections (a) through (d).

(a) If the drawing has not been held, the division may extend the application deadline and evaluate the application as though filed timely.

(b) If the drawing is over and the wildlife document applied for is available, the division may issue the wildlife document.

(c) If the drawing is over and the wildlife document applied for is not available, the division must follow the procedures set forth in Subsection (7).

(d) If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the applicant.

(2) A division error, which results in an application denial for wildlife documents other than those issued through a drawing, may be resolved by extending the application deadline and evaluating the application as though filed timely.

(3) A division error, which results in an impermissible surrender or exchange of a wildlife document may be resolved by extending the deadline necessary to validate the surrender or exchange, provided:

(a) the applicant has not participated in the activity authorized by the surrendered wildlife document; and

(b) the applicant shall be substantially prejudiced if relief under this section is not granted.

(4) A division error, which results in the improper denial of a wildlife document, may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document erroneously denied is available, the division may issue the wildlife document.

(b) If the wildlife document erroneously denied is not available, the division must follow the procedures set forth in Subsection (7).

(5) A division error, which results in the erroneous issuance of a wildlife document may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document requested by the applicant prior to or at the time of the error is currently available, the division may issue the wildlife document.

(b) If the wildlife document requested by the applicant prior to or at the time of the error is currently not available, the division must follow the procedures set forth in Subsection (7).

(6) A division error, which directly results in the applicant's loss of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period.

(7) Procedures for issuing wildlife documents otherwise unavailable for distribution are as follows:

(a) If the applicant would have received a wildlife document absent an error, or if the applicant received a wildlife document because of an error, the division shall determine if an additional wildlife document beyond the applicable quota may be issued without detriment to the particular wildlife species in a specific hunt area.

(i) If issuing the additional wildlife document is not detrimental to the species in the hunt area, the division may issue the wildlife document, except as provided in Subsection (A).

(A) Only the Wildlife Board may approve issuing an additional permit for a once-in-a-lifetime hunt.

(B) Additional CWMU permits may not be issued.

(ii) If a wildlife document cannot be issued, the applicant may be placed at the top of the alternate drawing list.

(iii) If a wildlife document is not issued under Subsection (i) or (ii), the division may issue a bonus point or preference point, whichever is applicable.

(iv) If a bonus point or preference point does not apply, the division may issue a refund of the wildlife document and handling fee.

(b) If the applicant would not have received a wildlife document in a drawing, absent an error, the division may issue a bonus point or preference point, where applicable.

(c) If the wildlife document was applied for through a division drawing and the hunting season for that wildlife document is over, the division may:

(i) issue a bonus point or preference point for which the application was submitted, where applicable; or

(ii) issue a refund of the wildlife document and handling fee where bonus points or preference points do not apply.

R657-50-5. Third Party Errors.

(1) The division shall not be held responsible for third party errors, including those of a computer service, internet provider, financial institution or postal service, however, the division may mitigate a third party error as provided under this section.

(2)(a) The applicant must:

(i) provide proof to the satisfaction of the division that the error was due to a third party; and

(ii) provide written documentation from the third party verifying the error.

(3) Third party errors which result in failure to apply, rejection, or incorrect processing of an application to obtain a wildlife document through a drawing may be handled as provided in Subsections (a) through (c).

(a) If the error is brought to the division's attention prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application may be included in the drawing as though filed timely.

(b) If the error is brought to the division's attention after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the applicant's application is rejected because of the error, or the applicant otherwise fails to obtain the wildlife document applied for, the division may issue a bonus point or preference point for the hunt applied for, where applicable.

(c) A refund of handling fees shall not be made for third party errors.

(4) A third party error, which results in failure to apply, rejection, or incorrect processing of an application for a wildlife document issued outside the drawing process, may be handled by extending the application deadline and evaluating the application as though filed timely.

(5) An application deadline extension under this section may not be granted unless the applicant pays the prescribed application late fee.

(6) If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the applicant.

(7) A third party error, which directly results in the applicant's loss of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period.

R657-50-6. Landowner Association Operator Errors.

(1)(a) The division shall not be held responsible for landowner association operator errors, however, the division may mitigate a landowner association operator error as provided under this section.

(b) The applicant must provide proof to the satisfaction of the division that the error was due to a landowner association operator.

(c) If the applicant cannot prove to the satisfaction of the division that the error was due to a landowner association operator, the division will take no mitigating action.

(2) A landowner association operator error, which results in the incorrect processing of a voucher to obtain a wildlife document, may be mitigated as provided in Rule R657-42-11(3).

R657-50-7. Applicant Errors.

(1) The division shall not be held responsible for applicant errors. However, the division may mitigate an applicant error as provided under this section.

(2)(a) The applicant must:

(i) provide proof to the satisfaction of the division that the error was due to a negligent act or omission of the applicant or a person or entity acting in the applicant's behalf; and

(ii) provide written documentation from the person or entity, where applicable, acknowledging and verifying the error.

(3) Applicant errors which result in failure to apply, rejection, or incorrect processing of an application for a wildlife document through a drawing may be handled as provided in Subsections (a) and (b).

(a) If the error is brought to the division's attention prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application may be included in the drawing as though filed timely.

(b) If the error is brought to the division's attention after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the applicant's application is rejected because of the error, or the applicant otherwise fails to obtain the wildlife document applied for, the division may issue a bonus point or preference point for the hunt applied for, where applicable.

(4) An applicant error, which results in failure to apply, rejection, or incorrect processing of an application for a wildlife document issued outside the drawing process, may be handled by extending the application deadline and evaluating the application as though filed timely.

(5) An application deadline extension under this section may not be granted unless the applicant pays the prescribed application late fee.

(6) If an application is for one or more persons applying as a group, the division may treat the remaining members of the group the same as the applicant.

(7) An applicant error which directly results in the applicant's failure to earn a bonus point, loss or forfeiture of bonus points or the imposition of a waiting period, may be resolved by restoring part or all of the bonus points and removing the waiting period, provided the request for relief is submitted to the division within 180 days of the deadline for filing an application that resulted in failing to earn or forfeiting a bonus point or the imposition of a waiting period.

R657-50-8. Limitations.

An error may be reviewed at any time, but a wildlife document may not be issued or exchanged after the season closure for the activity authorized by the particular wildlife document.

R657-50-9. Error Committee.

(1) The error committee shall:

(i) review complaints of errors on applications, vouchers, wildlife documents, and fees;

(ii) determine facts;

(iii) apply the provisions of this rule; and

(iv) recommend resolutions to the Director's Office or Wildlife Board.

(2) Any relief granted and decisions made pursuant to this rule shall be reviewed and approved by the Error Committee and is subject to review by the division Director.

KEY: wildlife, permits

October 22, 2009	**23-14-19**
Notice of Continuation April 4, 2007	**23-19-1**
	23-19-38

R657. Natural Resources, Wildlife Resources.
R657-54. Taking Wild Turkey.
R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(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 Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-2. 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) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(d) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(e) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(f) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(g) "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.

(h) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(i) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(j) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-54-3. Application Procedure for Wild Turkey.

(1) Permits for wild turkey will be issued pursuant to R657-62-25.

R657-54-4. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-62-25.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-5. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6.

R657-54-6. Shooting Hours.

(1) Wild turkey 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 wild turkey.

R657-54-7. 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.

R657-54-8. Falconry.

Falconers may not release a raptor on wild turkey.

R657-54-9. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-10. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-11. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-12. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-13. Identification of Species and Sex.

The head and beard must remain attached to the carcass of wild turkey while being transported.

R657-54-14. Use of Dogs.

(1) Dogs may be used to locate and retrieve wild turkey 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.

R657-54-15. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

(1) Salt Lake 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, 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 are open for hunting wild turkey only during designated turkey 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 wild turkey hunting.

(c) Goshen Warm Springs is closed to wild turkey hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-16. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-17. 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.

R657-54-18. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-19. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-20. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to

hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-21. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Proclamation of the proclamation of the Wildlife Board for taking wild turkey.

KEY: wildlife, wild turkey, game laws
October 22, 2009 **23-14-18**
23-14-19

R714. Public Safety, Highway Patrol.
R714-500. Chemical Analysis Standards and Training.
R714-500-1. Authority.

A. This rule is authorized by Section 41-6a-515 which requires the commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

R714-500-2. Definitions.

A. Certification Report means document prepared by a technician detailing the results of a certification check.

B. Certification Check means analysis of instrument function and calibration performed by technician.

C. Instrument means breath alcohol concentration testing instruments employed by law enforcement officers for evidentiary purposes and approved by the department.

D. Operator means individual certified by the department to administer breath alcohol concentration tests.

E. Breath Alcohol Concentration Test Results means analytical results of a breath alcohol concentration test provided by an approved instrument. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

F. Program means all breath alcohol concentration testing techniques, methods, and programs.

G. Program Supervisor means authorized representative of the Commissioner of Public Safety for the breath alcohol concentration testing program and supervisor of said program.

H. Technician means individual certified by the department to operate, provide training on, and perform maintenance, repairs, and certification checks on breath alcohol concentration testing instruments.

I. Breath Test means test administered by an operator or technician on an instrument for the purpose of determining breath alcohol concentration.

R714-500-3. Purpose.

A. It is the purpose of this rule to set forth:

(1) Procedures whereby the department may certify:

(a) breath alcohol concentration testing programs;

(b) breath alcohol concentration testing instruments;

(c) breath alcohol concentration analytical results.

(d) breath alcohol concentration testing operators;

(e) breath alcohol concentration testing technicians; and

(f) breath alcohol concentration testing program supervisors.

(2) Adjudicative procedure concerning:

(a) application for and denial, suspension or revocation of the aforementioned certifications; and

(b) appeal of initial department action concerning the aforementioned certifications.

R714-500-4. Application for Certification.

A. Application for certification shall be on forms provided by the department in accordance with Subsection 63G-4-201(3)(c).

R714-500-5. Program Certification.

A. All programs must be certified by the department.

B. Prior to initiating a program, an agency or laboratory shall submit application to the department for certification. The application shall show the brand or model, or both, of the instrument to be used and contain a resume of the program followed. The department shall inspect to determine compliance with all applicable provisions under R714-500.

C. Certification of a program may be denied, suspended, or revoked by the department if, based on information obtained by the department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the department.

R714-500-6. Instrument Certification.

A. Criteria: To be approved, each manufacturer's brand or model of instrument shall meet the following criteria:

1. The instrument shall provide accurate and consistent analysis of breath specimen for the determination of breath alcohol concentration for law enforcement purposes;

2. Breath alcohol concentration analysis of an instrument shall be based on the principle of infra-red energy absorption or any other similarly effective procedure as specified by the Department;

3. Breath specimen analyzed shall be essentially alveolar or end expiratory in composition according to the analysis method utilized;

4. Measurement of breath alcohol concentration shall be reported in grams of alcohol per 210 liters of breath;

5. The instrument shall analyze a reference sample during certification checks, following procedures outlined in R714-500-6-D;

6. Other criteria, deemed necessary by the Department, may be required to correctly and adequately evaluate the instrument as practical and reliable for law enforcement purposes.

B. Acceptance: The Department shall approve all breath alcohol concentration testing instruments employed for law enforcement evidentiary purposes.

1. The Department shall maintain an approved list of accepted instruments. Law enforcement entities shall select instruments from this list, which list shall be available for public inspection upon request from the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

2. A manufacturer may apply for approval of an instrument by brand or model not on the list. The Department shall subsequently examine each instrument to determine if it meets criteria specified by R714-500 and applicable purchase requisitions.

3. Upon compliance with R714-500, an instrument may be approved by brand or model and placed on the list of accepted instruments.

4. Certification Reports verifying the certification of all instruments shall be kept on file by the program supervisor and made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

C. Initial Instrument Certification: All breath alcohol concentration testing instruments used for law enforcement evidentiary purposes shall be certified prior to being placed into service at a specific location.

1. The program supervisor shall determine that each individual instrument, by serial number, conforms to the brand or model that appears on the commissioner's accepted list.

2. Prior to an instrument being placed into service at a specific location, a technician shall perform a certification check, following the standardized operating procedure and requirements outlined in R714-500-6-D.

3. Upon successful completion of these requirements, the instrument shall be deemed to be operating correctly and may be placed into service.

D. Regular Instrument Certification Checks

1. Once an instrument has been placed into service at a specific location, it shall be certified by a technician on a routine basis, not to exceed 40 days between certification checks.

2. The program supervisor shall establish a standardized operating procedure for performing certification checks, following requirements set forth in R714-500 or by using such procedures as recommended by the manufacturer of the

instrument to meet its performance specifications, as derived from:

a. electrical power check;
b. operating temperature check;
c. internal purge check;
d. invalid test procedures check;
e. diagnostic measurements check;
f. internal calibration check;
g. known reference sample check; and
h. measurements of breath alcohol concentration, displayed in grams of alcohol per 210 liters of breath.

A copy of these standard operating procedures may be made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

3. For known reference sample checks set forth in R714-500-6-D-2-g, the instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight or volume of ethanol held at a constant temperature or a compressed inert gas and alcohol mixture from a pressurized cylinder.

a. The result of the analysis shall agree with the reference sample's predicted value, within parameters of calibration set at plus or minus 5% or 0.005, whichever is greater, or such limits as set by the Department.

i. For example, if a known reference sample has a value of 0.100, the parameters of calibration set at plus or minus 5% would equal 0.005 (0.100 x 5 % = 0.005). Acceptable parameters of calibration using a known 0.100 reference sample would therefore range from 0.095 to 0.105.

b. Analytical results of the known reference sample check shall be reported to three decimal places.

1. Other checks, deemed necessary by the Department or program supervisor, may be required to correctly and adequately evaluate the instrument.

2. Technicians shall follow the standardized operating procedure as set forth by the program supervisor when performing certification checks.

4. If an instrument successfully passes all the certification checks, it shall be deemed to be operating properly.

5. A report of the certification results with the serial number of the certified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

6. Results of certification checks shall be kept in a permanent record retained by the technician or program supervisor.

E. Instrument Repair and Recertification

1. The Department may at any time determine if a specific instrument is unreliable or unserviceable. Upon such a finding, the instrument shall be removed from service and certification withdrawn.

2. A report of the certification results showing the certification has been withdrawn shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

3. Upon proper repair, the instrument may be recertified and again placed into service at a specific location.

a. Minimum requirements for recertification are identical to those outlined in R714-500-6-D, sub-sections 2, 3, and 4.

4. A report of the certification results with the serial number of the recertified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

R714-500-7. Breath Alcohol Concentration Test Analytical Results.

A. The instrument should be operated by either a certified operator or technician.

B. Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.

1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.

2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.

a. For example, a result of 0.237g/210L shall be reported as 0.237.

C. Results of breath alcohol concentration tests will be printed by the instrument.

D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.

F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

R714-500-8. Operator Certification.

A. All breath alcohol testing operators must be certified by the department.

B. All training for initial and renewal certification will be conducted by a program supervisor or technician.

C. Initial Certification

(1) In order to be certified as a breath alcohol concentration testing instrument operator, an individual must successfully complete a course of instruction approved by the department, which must consist of eight hours of training, including as a minimum the following:

a. Effects of alcohol in the human body;
b. Operational principles of breath testing;
c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
d. Legal aspects of chemical testing, DUI case law, and other alcohol related laws;
e. Laboratory participation performing simulated tests on the instruments, including demonstrations under the supervision of a class instructor;
f. Examination and critique of course.

(2) After successful completion of the initial certification course a certificate will be issued that will be valid for three years.

D. Renewal Certification

(1) The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will consist of eight hours of training, including as a minimum the following:

a. Effects of alcohol in the human body;
b. Operational principles of breath testing;
c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
d. Legal aspects of chemical testing DUI case law, and other alcohol related laws;
e. Examination and critique of course;
f. Or the operator must successfully complete the web-based computer program including successful completion of exam. Results of exams must be forwarded to program supervisor and a certification certificate will be issued.

(2) After successful completion of the re-certification course a certificate will be issued that will be valid for three years.

(3) Any operator who allows their certification to expire one year or longer must retake and successfully complete the

initial certification course as outlined in R714-500-8.

R714-500-9. Technician Certification.

A. All technicians, must be certified by the department.

B. The minimum qualifications for certification as a technician are:

(1) Satisfactory completion of the operator's initial certification course and/or renewal certification course;

(2) Satisfactory completion of the Breath Alcohol Testing Supervisor's course offered by Indiana University or an equivalent course of instruction, as approved by the program supervisor;

(3) Satisfactory completion of the manufacturer's maintenance and repair technician course;

(4) Maintenance of technician's status through a minimum of eight hours training each calendar year. This training must be directly related to the breath alcohol testing program and must be approved by the program supervisor.

C. Any technician who fails to meet the requirements of R714-500-9-B and allows their certification to expire for more than one year, must renew their certification by meeting the minimum requirements as outlined in R714-500-9-B.

D. Only certified breath alcohol testing technicians shall be authorized to provide expert testimony concerning the certification and all other aspects of the breath testing instrument under their supervision.

R714-500-10. Program Supervisor Certification.

The program supervisor will be required to meet the minimum certification standards set forth in R714-500-9. Certification should be within one year after initial appointment or other time as stated by the department.

R714-500-11. Previously Certified Personnel.

A. This rule shall not be construed as invalidating the certification of personnel previously certified as operators under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements as outlined in R714-500-8.

B. This rule shall not be construed as invalidating the certification of personnel previously certified as a technician under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements in R714-500-8.

R714-500-12. Revocation or Suspension of Certification.

A. The department may, on the recommendation of the program supervisor, revoke or suspend the certification of any operator or technician:

(1) Who fails to comply with or meet any of the criteria required in this rule; or

(2) Who falsely or deceitfully obtained certification; or

(3) Who fails to show proficiency in proper operation of the breath testing instrument; or

(4) For other good cause.

R714-500-13. Adjudicative Proceedings.

A. Purpose of section. It is the purpose of this section to set forth adjudicative proceedings in compliance with Title 63G Chapter 4.

B. Designation. All adjudicative proceedings performed by the department shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

C. Denial, suspension or revocation. A party who is denied certification or whose certification is suspended or revoked, will be informed within a period of 30 days by the department the reasons for denial, suspension, or revocation.

D. Appeal of denial, suspension, or revocation. A party who is denied certification or whose certification is suspended or revoked may appeal to the commissioner or designee on a form provided by the department in accordance with Subsection 63G-4-201(3)(C). The appeal must be filed within ten days after receiving notice of the department action.

E. No hearing will be granted to the party. The commissioner or designee will merely review the appeal and issue a written decision to the party within ten days after receiving the appeal.

KEY: alcohol, intoxilyzer, breath testing, operator certification
October 15, 2008 41-6a-515
Notice of Continuation October 5, 2009 63G-4

R746. Public Service Commission, Administration.
R746-100. Practice and Procedures Governing Formal Hearings.
R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints may be converted to informal proceedings, pursuant to Section 63G-4-202.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.

C. "Committee" is the Committee of Consumer Services, Department of Commerce.

D. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

E. "Consumer complaint" is a complaint of a retail customer against a public utility.

F. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

G. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

H. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63G-4-202.

I. "Informal proceeding" is a proceeding so designated by the Commission.

J. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).

K. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

L. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

a. motions, oppositions, and similar filings in existing Commission proceedings;

b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

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Name of Attorney preparing or Signer of Pleading
Address
Telephone Number

     BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH
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In the Matter of the          )
Application, petition,        )    Docket Number
etc.-- for complaints,        )
names of both complainant     )    Type of pleading
and respondent should         )
appear                        )

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C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent of at least 12 point type.

Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 3-1/2" floppy disk or compact disc (CD), using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched.

D. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

E. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

F. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

G. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," which shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

H. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the Commission's Law and Motion calendar and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

I. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

R746-100-5. Participation.

Parties to a proceeding before the Commission, as defined in Section 63G-4-103, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Committee shall be given full participation rights in any case.

R746-100-6. Appearances and Representation.

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and

stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

R746-100-7. Intervention and Protest.

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63G-4-207.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(b)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, responses to, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedure to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;

2. delineate scope of cross-examination and set limits thereon if necessary;

3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63G-4-201(2)(b) and 63G-4-201(3)(e) at least five days before the date of the hearing or shorter period as determined by the Commission.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63G-4-209.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes

a hearing for the presentation of proprietary, trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public witnesses may elect to provide unsworn statements.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, filed on a 3-1/2" floppy disk or CD, using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63G-4-206(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written test numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

a. be updated throughout the hearing;

b. depict the final positions of each party on each issue at the end of the hearing; and

c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

1. Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.

2. If a party requests that a scheduling conference or technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-11. Decisions and Orders.

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. A short synopsis of the order, placed at the beginning of the order, shall describe the final resolutions made in the order.

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 30 days of the issuance date of the order in accordance with Section 63G-4-301 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 15 days. Proceedings on review shall be in accordance with Section 54-7-15. A petition for reconsideration pursuant to Section 63G-4-302 is not required in order for a party to exhaust its administrative remedies prior to appeal.

R746-100-12. Appeals.

Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

F. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the

communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

R746-100-14. Rulemaking.

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63G-3-301.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

R746-100-15. Deviation from Rules.

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship which outweighs the benefits of the rule.

R746-100-16. Use of information Claimed to Be Confidential in Commission Proceedings.

A. Information, documents and material submitted or requested in or relating to any Commission proceeding which is claimed to be confidential will be treated in as follows.

1.a. Nature of Confidential Information. A person (Providing Party) required or requested to provide documents, data, information, studies, and other materials of a sensitive, proprietary or confidential nature (Confidential Information) to the Commission or to any party in connection with a Commission proceeding may request protection of such information in accordance with the terms of this rule. Confidential treatment shall be requested only to the extent a good faith reasonable basis exists for claiming that specific information constitutes a trade secret or is otherwise of such a highly-sensitive or proprietary nature that public disclosure would be inappropriate. Confidential treatment shall be requested narrowly as to only that specific information for which protection is reasonably required.

b. Identification of Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, furnished, or whether made available pursuant to any interrogatories, or requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Confidential Information, shall be furnished pursuant to the terms of this rule or any superseding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superseding Protective Order. All material claimed to be Confidential Information shall be so marked by the person producing it by stamping or noting the same with the a designation substantially as follows "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16", or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number" All copies of documents so marked will be made on yellow paper. Parties shall ensure that line numbering in any redacted version of a document shall conform to and retain the general formatting and line numbering used in the unredacted version of the document. Individuals providing electronic documents to the Commission should file both a confidential and non-confidential version each clearly marked as such. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this rule.

c. Use of Confidential Information and Persons Entitled to Review. The Commission, Division of Public Utilities, and Office of Consumer Services shall be provided with Confidential Information and may use the Confidential Information as these agencies deem necessary to perform their statutory functions, provided they shall protect the confidentiality of the information as required by Utah law. Other than these state agencies, all Confidential Information made available pursuant to this rule shall be given solely to counsel for the participants (which may include counsels' paralegals, administrative assistants and clerical staff to the extent reasonably necessary for performance of work on the matter), and shall not be used nor disclosed except for the purpose of the proceeding in which they are provided and in accordance with this rule; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information. The

Commission, the Division of Public Utilities, and the Office of Consumer Services, and their respective counsel and staff, under and pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this rule or Protective Order and shall be bound by the terms of this rule, except as otherwise stated herein and except for the requirement of signing a nondisclosure agreement. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the person being required to disclose Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by electronic mail facsimile and overnight mail to the person that provided such Confidential Information, addressed to the providing person and attorneys of record for such person, so that the person that provided the Confidential Information may seek appropriate restrictions on disclosure or an appropriate protective order. The disclosing person will not oppose action by, and will cooperate with the person that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

d. Nondisclosure Agreement. Prior to giving obtaining access to Confidential Information, as contemplated in 1.b. above, counsel or any experts shall agree in writing to comply with and be bound by this rule and any Protective Order. Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is provided below or referenced in the Protective Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this rule and any applicable Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by the terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the person with whom the signatory is associated. Such agreement shall be delivered to the providing person and counsel for the providing person prior to the expert gaining access to the Confidential Information.

The Nondisclosure Agreement may be in the following form:

"Nondisclosure Agreement. I have reviewed Public Service Commission of Utah Rule 746-100-16 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order." Thereafter there shall be lines upon which shall be placed the individual's signature, the typed or printed name of the individual, identification or name of the individual's employer or firm employing the individual (if any), the business address for the individual, identification or name of the party in the proceeding with which the individual is associated, and the date the nondisclosure agreement is executed by the individual.

e. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Sensitive Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requested Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Sensitive Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

2.a. Challenge to Confidentiality or Proposed Additional Protective Measures. This rule establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

b. In the event that persons are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information, are highly sensitive documents and information referred to in A.1.e. above, or agree on the appropriate treatment of Highly Sensitive Information, the person objecting to the classification as Confidential Information or the person claiming highly sensitive documents and information and the need for additional protective measures shall forthwith submit the disputes to the Commission for resolution.

c. Any person at any time upon at least ten (10) days prior notice, when practicable, may seek by appropriate pleading, to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this rule or a Protective Order, removed from the protective requirements of this rule or the Protective Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked substantially as follows "CONFIDENTIAL--SUBJECT TO RULE 746-100-16 OR PROTECTIVE ORDER IN CASE NO. XX-XXX-XX (reflecting the appropriate docket number)." unless the Commission determines, and so provides by order, that such marking need not occur. It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless and until released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this rule or Protective Order, or from the protection of the sealed record, such order of the Commission shall not be effective for a period of ten (10) days after entry of the order.

3.a. Receipt into Evidence. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, if practicable, the person intending to use such Confidential Information shall make that intention known to the providing person. The requesting person and the providing person shall make a good faith effort to reach an agreement so that the Confidential Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing person shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing person to be placed in a sealed record shall be made and only for that purpose. Otherwise,

persons shall make only general references to Confidential Information in any proceedings.

b. Seal. While in the custody of the Commission, Confidential Information provided pursuant to this rule or a Protective Order shall be marked substantially as follows: "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-100-16 OR PROTECTIVE ORDER IN CASE NO. XX-XXX-XX (reflecting the appropriate docket)".

c. In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in a sealed record of a proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this rule or Protective Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be similarly marked and treated.

d. Appeal. Sealed portions of the record in any proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

e. Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this rule or Protective Order, and shall be returned to the providing person or counsel for the providing person within 30 days after final settlement, or conclusion of the matters in which they were used, including administrative or judicial review thereof. Alternatively, a person receiving Confidential Information pursuant to the terms of this rule or Protective Order may certify, within 30 days after final settlement, or conclusion of the matter including administrative or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this rule or Protective Order may retain the Confidential Information, their notes, work papers or other documents as their attorneys' work product created with respect to their use and access to Confidential Information in the matter. An expert witness, accorded access to Confidential Information pursuant to this rule or Protective Order, shall provide to counsel for the person on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing responsibility, this provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order. Any party that intends to use or disclose Confidential Information obtained pursuant to this rule or a Protective Order in any subsequent Commission dockets or proceedings, shall do so in accordance with the terms of this rule or any applicable protective orders issued in such other subsequent Commission dockets or proceedings and only after providing notice of such intent to the providing person along with an identification of the original source of the Confidential Information.

4. Use in Proceedings. Where reference to Confidential Information is required in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, brief, or document and submitted under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. All the protections afforded in this rule apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general, or conclusionary form, it shall be placed in a separate section of an Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless such Confidential Information is released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this rule or Protective Order shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this rule or a Protective Order.

8. Reservation of Rights. Persons affected by the terms of this rule or a Protective Order retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this rule or a Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This rule or a Protective Order shall in no way constitute any waiver of the rights of any person to contest any assertion by another person or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

KEY: government hearings, public utilities, rules and procedures, confidential information

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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.25 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the

designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment

Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service

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	54-8b-12
	54-8b-15

R746. Public Service Commission, Administration.
R746-700. Complete Filings for General Rate Case and Major Plant Addition Applications.
R746-700-1. General Provisions Applicable to All 7XX Series Rules.

This rule provides provisions for complete filings for general rate case and alternative cost recovery for major plant addition applications and other 7XX series rules, meaning R746-700-1 through and including R746-700-51.

A. Purpose. The 7XX series rules apply to an application for a general rate case filed by a public utility for an increase or decrease in base rates pursuant to 54-7-12 and an application for alternative cost recovery for a major plant addition filed by an electrical corporation or gas corporation public utility for cost recovery of a major plant addition pursuant to 54-7-13.4.

B. A public utility anticipating to file a general rate case or major plant addition application shall file with the Commission a non-binding notification of its intent to file such application at least 30 days prior to the anticipated filing date of the application. The notification shall be served on all parties that participated in the public utility's last prior general rate case or major plant addition proceeding respectively. The Commission may grant an exception or modification to this notification requirement based on a showing of good cause by the public utility.

C. Minimum filing requirements for a complete filing. Sections 700-10, 700-20, 700-21, 700-22, 700-23, 700-30, 700-40, 700-41, 700-50, and 700-51 set forth the information which must be contained in an application, testimony, exhibits, evidence, data, and any other informational documents filed with an application for the application to be considered a complete filing pursuant to 54-7-12(2) or 54-7-13.4(2).

D. Paper and Electronic media documents.

1. All documents filed with the Commission are to be in paper and electronic media versions as directed by R746-100. When a particular exhibit, data or informational document or its accompanying documentation required by a rule is voluminous, a proceeding participant shall file only three complete paper versions and the electronic media version with the Commission. The proceeding participant shall file any additional paper versions as subsequently directed by the Commission.

2. A proceeding participant is encouraged to provide voluminous material to other participants in a proceeding in an electronic media version. Unless a participant in a Commission proceeding notifies the Commission and other proceeding participants that it is unable or unwilling to receive documents in electronic media, provision of documents to a participant need only be in electronic media.

3. An applicant shall provide electronic media versions of its application and additional information and documents to be provided pursuant to any series 7XX rule to the Division of Public Utilities and the Office of Consumer Services, other parties granted intervention in the utility's last prior application proceeding, and any other person that has petitioned for intervention in the proceeding. An applicant need not provided these documents to a person whose intervention it opposes unless and until the person is granted intervention by the Commission. Notwithstanding the foregoing, the applicant shall provide a reasonable number of paper copies of the documents to the Division of Public Utilities and the Office of Consumer Services upon request.

E. Format, detail, etc. of documents, information, data, etc., indication of non-existence of information or unavailability of information of the type, detail or format described in a rule provision in the public utility's normal course of business and accounting, and confidential and privileged documents or information.

1. The format, detail, etc. of documents, data, information, etc. provided pursuant to any 7XX series rule shall be in the same format, detail, etc. as provided in the public utility's last prior proceeding or as otherwise directed by the Commission in or subsequent to the last prior proceeding. If a document, spreadsheet, schedule, etc. has internal formulas or other types of inter-cell relationships, the electronic media version shall be provided with such formulas or cell relationships intact.

2. If any series 7XX rule requires particular documents, data, information, etc. to be produced and the documents, data, information, etc. do not exist, the proceeding participant shall specifically so indicate. If any 7XX series rule requires information to be produced of a certain type or in a certain detail, format, etc. which is not so maintained in the normal course of business and accounting, the participant will so indicate and identify and provide what information does exist as maintained by the participant.

3. Information claimed to be confidential that would fall within any 7XX series rule that is filed or provided by a proceeding participant in connection with an application shall be filed or provided under the terms of R746-100-16 or any applicable protective order. If a proceeding participant believes a document, data, information, etc. would fall within any 7XX series rule but claims a privilege affects its production, in lieu of providing the document, data, information, etc., the participant shall provide a description of the document, data, information, etc. and explain the privilege's application to the document, data, information, etc.

R746-700-10. Test Period Information to Be Included With a General Rate Case Application.

A. Cases where the test period is first identified in the application.

1. The applicant will provide information which will demonstrate what adjustments are required to be made to the 12 months of actual, unadjusted results of operations data, including all regulated costs and revenues, contained in the most recent periodic reported results of operations submitted to the Commission, to arrive at the test period used by the applicant in its application, on both a Utah jurisdiction and total company basis. If the public utility does not submit periodic reported results of operations to the Commission, the applicant shall use the public utility's most recently audited 12-month period in lieu thereof as the base period upon which the test period used in the application is developed.

a. Adjustments to be demonstrated include, but are not limited to: normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application, and all further adjustments to arrive at the test period used by the applicant in the general rate case filing.

b. The applicant will provide information explaining why the test period used is the most appropriate for the case.

c. In addition to the information relating to each adjustment identified in compliance with R746-700-10.A1.a, the applicant will also provide a summary index which identifies each adjustment or portion of an adjustment made in the filing material which can be used to locate where each adjustment or portion thereof is addressed, treated, applied, etc. in the application, testimony, exhibits and other documentation submitted. The summary index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

2. If the test period used in the application is a future test period, in addition to the demonstration of adjustments to be made for the test period used by the applicant in the general rate case application, the applicant will make the same demonstration for the 12-month period ending on the last day of

June or December, whichever is closest, following the filing date of the application if this alternative period does not have an end date beyond the test period used in the general rate case application.

B. Cases where the test period is identified and approved prior to the filing of an application.

1. An applicant planning to file an application may first request Commission approval of a test period to be used prior to filing an application. The request to approve the proposed test period shall be accompanied by testimony and exhibits providing information supporting the proposed test period.

2. Subsequent to the Commission's approval of a test period, the applicant may then submit an application, using as the test period for the case the test period previously approved by the Commission and need not provide the alternative test period demonstration required by R746-700-10.A.2.

R746-700-20. Information For a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using the allocation methods used in the public utility's last general rate case proceeding or any allocation method subsequently approved by the Commission. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-20 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. Historical results of operations information:

1. actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period as contained in its last periodic reported results of operations filing submitted to the Commission.

2. adjusted results of operations for the same period.

3. a description of any significant changes in accounting policies for the 24-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a forecasted test period is used, any future significant changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

B. If a non-forecasted test period is used in the application, the applicant shall provide information identifying and supporting each and every modification to the historical results of operations to arrive at the non-forecasted test period used in the general rate case application.

C. If a fully or partially forecasted test period is used in the application, which forecasted test period was not previously approved by the Commission for the general rate case application, the following forecasted test period information shall be provided (the format of the forecasted test period data shall be comparable to the historical results of operation information):

1. Revenues, with details supporting the test period revenues including (as applicable):

a. Usage, per customer by customer class

b. Demand and energy usage

c. Assumptions used in the development of the revenue forecasts

d. Billing determinants, by customer class, used to calculate the forecast test period revenues.

e. Charges, fees, and rates used in the forecast development

f. Contract changes or other specific changes anticipated in the forecast.

2. Operating Costs, using the same cost categories as used in the base period used for compliance with R746-700-10.A, with details supporting the test period operating cost information, including:

a. Forecasted costs relying on escalators or drivers will include the details of the base costs and the key drivers that impact the forecasted amount. If forecasted costs are not based on historical levels that have been inflated or escalated, the applicant shall provide supporting documents in the most detailed level available.

b. The information will identify the index or rate of inflation applied to accounts, budget items or specific cost components that result in adjusted costs in the forecasted test period. Source documents supporting the index or rate of inflation applied will be identified and will be provided or made available.

3. Labor Costs shall be identified separately. The applicant will provide:

a. The actual most recent number of full-time equivalent employees and, separately, the forecasted number of full-time equivalent employees for the forecasted period. The most recent number of actual contract labor employees and the forecasted number of contract labor employees for the test period will also be provided as available and separately identified. The most recent number of actual union labor employees and the forecasted number of union labor employees for the test period will also be provided as available and separately identified.

b. The associated costs related to the full time equivalent labor and contract labor levels. Direct employees, contract employees, union and nonunion employees will each be provided separately.

c. Overtime costs, premiums, incentives, or other labor costs included in the forecast, with each provided separately. Union and nonunion costs shall be provided separately.

d. Any assumed salary and wage increases included in the projected labor costs will be identified. Any of the increases supported by a union contract will be so identified.

e. Pensions and benefits, overheads or other employee benefit costs that are included in the forecast period. Each of the separate employee benefit components will be separately identified (i.e., medical, dental, pensions, etc.) Any assumptions regarding projected increases in such costs caused by factors other than changes in full time employee levels will be identified and described, with supporting assumptions identified.

f. If projected increases in pension expense cause a material cost impact, at a minimum, the following information should be provided for one year prior to the historical period through the test period: service cost, interest cost, expected return on assets, net amortization and deferral, amortization of prior service cost, and total net periodic pension cost. The information shall also include for each of the 12-month periods the expected long-term rate of return on assets, discount rate, salary increase rate, amortization of transition asset or obligation, percent of pension cost capitalized, minimum required contribution per IRS, maximum allowable contribution per IRS, and actual (or projected) contribution made to the trust fund. Also included shall be the projected year-end balance at the end of each of the 12-month periods for accumulated benefit obligation, projected benefit obligation, fair value of plan assets, and market related value of assets.

4. Capital Expenditures or additions. The applicant will provide capital expenditures detail, and changes affecting rate base, including:

a. The detail for the changes, beginning with the start of

the historic period results of operation through the test period. The detail will include dollar amounts and in-service dates.

b. The detailed calculation of depreciation expense and accumulated depreciation impacts as a result of the capital expenditures affecting rate base. For depreciation expense, the information will include the balances by plant account or function, depending on how the projection is done, to which the depreciation rates are being applied and the respective depreciation rates being used, by account or function, depending on how the projection is done.

c. Interdependencies of capital expenditures to operation and maintenance items will be identified.

d. A list will be provided of all major capital additions to rate base individually exceeding $1,000,000 or 0.01% of total company net plant in service, whichever is greater for each year, beginning with the year prior to the historic periodic reported year through the test period. Projects under $1,000,000 shall be grouped in aggregate utilizing the utility's usual plant categorizations. A brief description will be provided for each major capital addition in the list.

i. exceeding 0.1% of total company net plant in service or $5,000,000, whichever is greater, for an electrical corporation, or

ii. exceeding 0.1% of total company net plant in service or $1,000,000, whichever is greater, for a gas corporation.

e. Detailed calculation of plant retirements.

5. Regulatory Adjustments. The applicant will provide details of all the regulatory adjustments required in the filing:

a. Information for recurring regulatory adjustments, such as amortizations, indicating compliance with past Commission orders for any item included in the filing.

b. Separately, a reversing adjustment and the reasons for non-inclusion or departure from a Commission ordered practice or adjustments if the applicant does not wish to have them apply to the application.

c. Unless already included in unadjusted results, regulatory adjustment information will include disallowances from prior orders, implementation of accounting orders approved by the Commission, or other adjustments necessary to make the forecasted test period data acceptable for ratemaking in Utah. Each of the regulatory adjustments will be supported by prefiled testimony or a detailed description contained within the schedules.

6. Other Rate Base. Details of other rate base accounts shall be provided by the applicant. For other items of rate base, such as deferred debits, accumulated deferred income taxes, materials and supplies, miscellaneous rate base, customer advances, deferred credits, etc., the applicant shall provide information showing the 12-month period of the historical results of operations, and any changes, both debits and credits, to those amounts through the test period resulting in the projected amount included in the filing. The information shall provide descriptions of any adjustments and modifications made to the historical period amounts and assumptions included in the projections. For any accounts in which no change from the historical level is proposed, a description of why the amount is not forecasted to change shall be included.

7. Taxes. Forecasting methods, calculations and key assumptions used to adjust historical tax information to projected costs and results will be provided on a tax item basis (i.e., income, FICA, property taxes, etc).

R746-700-21. Cost of Service and Rate Design Information for a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-21 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. A Utah Class Cost of Service Study.

1. A Utah Class Cost of Service Study based on the test period with supporting documentation including the development of allocation factors.

2. If a new customer class is proposed, the applicant shall either:

a. include class cost of service studies; one which uses only existing customer classes and another with the newly proposed class included, or

b. explain why no cost of service study including the new customer class is included and how the new customer class is to be treated in setting rates in the case.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement. An exhibit will be provided showing the test period blocking based on adjusted actual and forecasted billing units in the development of the revenues for each rate schedule.

D. Its proposed tariff sheets for all tariff provisions for which it proposes changes.

1. An applicant need not include proposed tariff sheets for changes to tariff pages showing rates, charges, or fees if these proposed price changes are provided in a readily identifiable form elsewhere in the application.

R746-700-22. Additional Information for a General Rate Case Application Using a Forecasted Test Period Filed by an Electrical Corporation or a Gas Corporation.

If not already included with the application, pursuant to R746-700-20 or R746-700-21, an applicant shall also file with the Commission the following information or documents when filing a general rate case application which uses a forecasted test period. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-22 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation or gas corporations shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

A. Definitions. As used herein, the following terms shall have the indicated meanings:

1. Time Periods. Definitions of time periods for which information is to be provided in compliance with this rule are as follows:

a. Year: A 12-month period designated as "12 months ending Month Date, Year".

b. Base Year (BY): The 12-month historical period ending on the ending date for the most recent periodic reported results of operations filing submitted for the public utility, or if it does not file periodic results of operations, the base period upon which the test period used in the application is developed.

c. Test Period (TP): The 12-month period used as the test period for the general rate case application.

d. Historical Year(s) (HY): Year(s) immediately

preceding the Base Year.

e. To Date: Up to the most recent date for which information is reasonably available to the public utility in preparing its general rate case application.

f. Workpapers: The documents and source material used to develop the inputs to the general rate case filing. The type, nature, level of detail, format, etc. of the information compilation, schedule, document, etc. shall be reasonably comparable to that provided to parties in the public utility's prior general rate cases.

2. Provide, Describe, etc. The terms "provide" or "describe," or terms with similar meaning, shall mean to deliver available electronic copies and/or paper copies of designated data and documents to interested persons; provided that, when necessary and appropriate, prompt arrangements may be made for review of designated data and documents at a utility location in Utah or at another mutually agreeable place. Spreadsheets and workpapers are to be provided in "live" electronic format (not PDF), i.e. models and spreadsheets are to be provided with formulas intact and input data available.

3. Materiality. Materiality is defined as a change in requested Utah jurisdictional revenue requirement equal to or greater than 0.1 % of total state revenue requirement or $500,000, whichever is less.

4. Model(s). The term Model(s) shall mean the major analytical software tools and spreadsheets used by the utility to develop its general rate case application. Smaller analytical tools, such as special purpose electronic spreadsheets, are not included in the definition of the term Model(s) for purposes of this rule.

B. Revenue Requirement Information.

1. Forecasted test period data. A comparison of the Test Period data Results of Operations (RO) to the Base Year actual, unadjusted RO and adjusted RO on both a jurisdictional and total company basis. This is to be made available in a side-by-side comparison on a consistent basis by FERC Account.

2. Operating and Capital Budgets. A comparison of the utility's operating budget and capital budget to the actual results for the Base Year, the prior Historical Year, and To Date on a total company basis. This comparison is to be at the most detailed level available and provide available explanation for material variances.

3. Labor Costs. A comparison of budgeted labor costs and number of full-time equivalents to the actual labor costs and full-time equivalents by year for the Base Year and the prior Historical Year on a total company basis. These shall show separately, to the degree available, the direct labor costs, premiums, incentives, benefits and overhead costs. These shall show contract labor costs separately from direct labor costs, and union labor costs separate from nonunion costs. The information shall provide available explanations for material variances.

4. Workpapers. The information shall provide the forecast workpapers (including assumptions, spreadsheets and tests).

5. Forecasted Data - Revenue Requirement.

a. Support and explanations for forecasted values, including Base Year starting values, adjustments made to the Base Year values and key drivers that impact the forecasts, together with supporting documents.

b. Indices, inflation rates and escalation factors used in preparing forecasts, including supporting source documents.

c. A revenue requirement workbook that tracks all input data beginning with the Base Year through the Test Period. This will provide summarized revenue requirement sections of the jurisdictional allocation model for the Base Year, the Test Period and any intervening year. The workbook and summaries are to include, inter alia, billing determinants, rate base and capital structure, including dollar capitalization, for the specified Years.

d. Complete net power cost calculations for any intervening year between the Base Year and Test Period.

6. Models. Workable versions of Models utilized in determining or projecting rate case values, with formulae intact and source data included, along with available instructions and write-ups regarding use of the Model and written descriptions of the Model and its inputs.

C. Cost of Service Information

1. Forecasted Data - Class Cost of Service. Class cost of service data on a Utah allocated basis under all approved jurisdictional allocation methods for the Base Year and Test Period.

2. Forecasted Data - Rate Design. Test Period rate design data on a Utah allocated basis under all approved jurisdictional allocation methods used for reporting purposes.

D. Miscellaneous Information

1. Accounting - Changes. A detailed description of Material changes in accounting policies or procedures adopted by the utility since the prior general rate case or as anticipated through the end of the Test Period. This will include a detailed description of the impact of change in accounting policy or procedure on the Test Period and identify the basis of the change.

2. Accounting - Write-offs. A detailed description of Material write-offs of assets and/or liabilities from the start of the Base Year - To Date that affect Utah revenue requirement. For each material write-off, the following will be provided:

a. Copy of journal entry recording the write-off;

b. Detailed description of the purpose of the write-off;

c. Copies of studies, reports or analyses done in determining whether or not to write off the asset;

d. Amount of the write-off and identification of the accounts charged on a total Company and a Utah jurisdictional basis; and

e. Amount included in the projected Test Period for write-offs, if any, on a total Company and a Utah jurisdictional basis, by account.

3. Affiliates - Organizational Charts. For the Base Year and Test Period and continuing To Date, the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status.

4. Affiliates. A detailed description of corporate restructurings and changes in affiliate relationships since the filing of the prior general rate case and also describe changes in the corporate and affiliate relationships between the Base Year and the end of the Test Period reflected in the filing.

5. Affiliates. A copy of Material new or Materially modified contracts or agreements entered into since the filing of the prior general rate case, including attachments thereto, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or costs allocated or directly charged to Utah regulated operations included in the general rate case application, between the utility and/or its parent company and affiliated companies for services and/or goods rendered between or among them. This is to include a list of active contracts unless already provided in the most recent Affiliate Interest Report.

6. Affiliates. A copy of cost allocation manuals and/or policies and procedures that set forth the detailed cost allocation methodology and/or pricing methodology used to charge costs between affiliates that have changed since the filing of the prior general rate case.

7. Audit - Financial. A copy of each adjusting journal entry made in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. Supporting documentation will be included. The information will also identify and provide adjusting journal entries included in the independent auditors' final recommendations that were

not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

8. Audit - Financial. A copy of management letters received from the utility's independent auditors or responses to those management letters for the Base Year, the prior Historical Year and the period To Date.

9. Audit - Financial Audit Workpapers. If access to audit workpapers is allowed by the utility's independent auditor, the utility will coordinate review of the financial audit workpapers for the most recent completed financial audit conducted by the utility's independent auditors at a mutually agreed upon location. If access to workpapers is not allowed by the independent auditor, the utility will coordinate the review of the most recent quarterly review conducted by the utility's independent external auditors prepared for the utility's board of directors.

10. Audits - Internal. A listing of internal audits conducted by or for the utility or its parent company for the Base Year, the prior Historical Year and To Date if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in the general rate case application. Notice of Internal Audit reports completed during the pendency of the case will be provided upon completion to all parties participating in the case.

11. Board of Directors - Meeting Minutes. The Board of Directors' meeting minutes for the Base Year, the prior Historical Year and To Date for the utility and the parent company if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in general rate case filings for the same period.

12. Budget. Complete copies of detailed annual operating and capital budgets for the Base Year through the end of the Test Period.

13. Budget. Copies of operating and capital budget instructions and directives provided to employees, including assumptions, directives, manuals, policies and procedures, timelines, and descriptions of budget procedures for the budget or forecast for the Test Period and To Date.

14. Budgets - Operating Plans. If available, copies of written operating plans that describe the utility's goals and objectives for the Base Year through the end of the Test Period.

15. Budget - Variance. A complete copy of quantitative and narrative monthly, quarterly and annual comparisons of operating and capital budgets to actual expenditures for the Base Year, the prior Historical Year, and for the period from the Base Year To Date.

16. Cost of Capital - Debt Expense. The currently forecasted financings for the next three years.

17. Cost of Capital - Debt Expense. The monthly balance of short-term debt and monthly short-term debt cost rates, for the Base Year, the prior two Historical Years and To Date.

18. Cost of Capital. Copies of the most recent bond rating agencies reports on the Company.

19. Employee Costs. A breakdown of the total amount of gross payroll and employee benefit costs (by benefit type) for the Base Year, the prior Historical Year and through the end of the Test Period between amounts expensed and amounts capitalized and provide the percentage of payroll and employee benefits (by benefit type) charged to expense for each Year.

20. For the Base Year, the prior Historical Year, To Date and for the Test Period, the amount of overtime, the amount of premium pay, the amount of other salary/labor costs and the amount of incentive compensation in total and expensed for each.

21. Employee Costs. A list of compensation and benefit studies the utility has for the Base Year, the prior Historical Year and To Date and indicate which of the studies were used (if any) in projecting the compensation and employee benefit costs for the Test Period.

22. Employee Costs - Employee Levels. Describe, in detail, Material employee reductions, employee severance plans, or early retirement programs conducted or anticipated by the utility during the Base Year, the prior Historical Year, and To Date and as projected through the end of the Test Period that are and are not reflected in the application. If anticipated, but not reflected in the application, explain why they are not included. This should provide information on major plans or programs beyond cost management efforts undertaken in the normal course of business. This should include, but not be limited to, a detailed description of the plan, number of employees offered or projected to be offered early retirement or severance, number of employees accepting or projected to accept early retirement or severance, projected cost savings and costs associated with the program. For costs incurred, identify the amounts, by FERC account, and the dates the entries were booked.

23. Employee Costs - Employee Level. Separate lists of the budgeted and the actual number of employees (where available), by month, for the Base Year, the prior Historical Year, the Test Period and To Date. If the labor force levels are other than full-time equivalent positions, provide a separate listing stated in terms of full-time equivalent positions.

24. Employee Costs - Wages and Salaries Levels. The actual percentage of increases in salaries and wages for exempt, non-exempt and union employees for the Base Year, the prior Historical Year, Test Period and To Date.

25. Employee Costs - Incentive Plans. Complete copies of bonus programs or incentive award programs in effect for the utility for the Base Year, the prior Historical Year, the Test Period and To Date. Identify incentive and bonus program expenses incurred in the Base Year, the prior Historical Year, the Test Period and To Date and identify the amounts included in the Test Period. Identify the accounts charged. Identify incentive and bonus program expenses charged or allocated to the utility from affiliates or the parent company in the Base Year, the prior Historical Year, the Test Period and To Date.

26. Employee Costs - Benefits. A listing of health and other benefits received by employees during the Base Year. Provide a detailed description of changes to employee benefits occurring subsequent to the Base Year To Date and anticipated future changes through the end of the Test Period that are reflected in the filing.

27. Employee Costs - Pensions. The two most recent pension actuarial reports prepared for the utilty.

28. Employee Costs - Post Retirement Benefits Other Than Pensions (PBOP). The two most recent PBOP actuarial reports prepared for the utility.

29. Employee Costs - Pensions and Post Retirement Benefits Other Than Pensions (PBOP). The list of assumptions used by the utility and its actuaries regarding the pension and PBOP costs for the Test Period that are included in the filing.

30. Operation, Maintenance, Administrative and General (OMAG) Expenses - Other - Contributions. For the Base Year and the Test Period, a list of contributions for charitable and political purposes, if any, included in accounts other than below the line. Indicate the amount of the expenditure, the recipient of the contribution, and the specific account in which the expense is included in the filing. Also identify for the Base Year and the Test Period the amounts of contributions for charitable and political purposes charged to the utility from affiliates in accounts other than below the line accounts.

31. OMAG Expenses - Advertising. For the Base Year, the prior Historical Year and the Test Period the amount of advertising expense, by account, by type of advertising (i.e., informational, instructional, promotional).

32. OMAG Expenses - Dues, Industry Associations. The

Material amounts included in the Base Year, the prior Historical Year and the Test Period for above-the-line payments to industry associations. Identify the organization/association name and amounts, along with the account in which the costs are included in the filing. If any of the dues or other amounts paid to the organizations/associations go toward lobbying and public relations efforts and are recorded in above-the-line accounts, provide the associated amounts included in the above-the-line accounts whether Material in magnitude or not.

33. OMAG Expenses - Outside Services Expense. An itemization of Material outside services expenses included in FERC account 923 for the Base Year, the prior Historical Year and the Test Period.

34. OMAG Expense - Injuries and Damages. The amount of injuries and damages expense for the Base Year, the prior Historical Year, the Test Period and To Date.

35. OMAG Expense - Insurance. The amount of insurance expense, by insurance type (i.e., property insurance, liability insurance, workers compensation, directors and officers liability insurance, etc.) for the Base Year, the prior Historical Year and the Test Period and identify the accounts the associated costs are included in.

36. OMAG Expense - Insurance. For insurance coverage for which the utility is self-insured, a description of that self insurance, a description of how it is accounted for in the utility's books and records and a description of activity for the Base Year, the prior Historical Year and the Test Period.

37. OMAG Expense - Legal Settlements. A list of Material amounts included in the Base Year and the Test Period (on a direct charge basis, affiliate billing, or allocation) that are the result of the settlement of lawsuits or other legal action.

38. OMAG - Uncollectibles - Bad Debt Reserve. For the Base Year, the prior Historical Year and the Test Period the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same periods, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

39. OMAG - Uncollectibles. A detailed description of changes in the utility's collection policies or write-off policies since the filing of the prior general rate case.

40. OMAG - Cost-saving Programs. A list and detailed description of cost-saving or cost increasing programs and initiatives implemented during the Base Year, To Date, and included in the Test Period. This should provide information on major plans or programs beyond efforts undertaken in the normal course of business and having a Material impact.

41. Financial - Strategic Plans. Copies of completed strategic plans and the most recent plan approved by the Board of Directors for the utility and the plan that was utilized at the time of and in the preparation of its application, if different.

42. Penalties and Fines. A list of penalties and fines in the Base Year and the Test Period and indicate in which accounts the associated amounts are included.

43. Rate Base - Working Capital. A complete copy of the lead/lag study, with supporting workpapers, used to compute cash working capital for the utility's application.

44. Reserve Accounts. Information on whether or not the utility maintains reserve accounts (e.g., an injuries and damages reserve account). If so, provide the monthly balances in reserve accounts for the Base Year, the prior Historical Year, the Test Period and To Date. This listing should include the monthly debits and credits to the reserve accounts. Also, provide the amount included in the Base Year and the projected Test Period expenses, by account, for building-up the reserve balances.

45. Revenues: Regulated Retail Sales. Provide by customer class, by month, the number of customers, actual usage, and normalized usage for the Base Year, the prior Historical Year, the Test Period and To Date.

46. Revenues - Other. Provide on a total company and a Utah jurisdictional basis, for the Base Year, the prior Historical Year, the Test Period and To Date the amount of other nonregulated-retail-sales revenues by revenue type.

47. Sales of Property. For the Base Year, the prior Historical Year, the Test Period and To Date, information showing whether the utility sold property, in which the proceeds for a property, which alone, or for multiple properties, which in the aggregate, would be Material. If so, for each such sale identify the property sold; whether, when, and in what manner it was included in rate base; show details of how the gain or loss was calculated; indicate when the sale occurred; and explain how and whether the utility is treating such gain or loss in its application. For sales in which the proceeds would be Material, individually or in the aggregate, provide a list of any properties currently offered for sale and those projected to be offered for sale through the end of the Test Period. The property sales information may be limited to sales of property that had been or are included in Utah rates while in service.

48. Taxes: Income. A list of and provide copies or make available for review, subject to R746-100-16, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, depending on specific content, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the filing of the prior rate case.

49. Taxes: Income. Provide copies or make available for review, subject to R746-100-16, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, copies of the most recent State and Federal income tax returns in which the utility participated.

50. Taxes: Income. Provide a copy of the current tax sharing agreement in which the utility participates.

R746-700-23. Additional Power Costs Information for a Forecasted Test Period to Be Filed by an Electrical Corporation.

A. An electrical corporation that has included power costs in a forecasted test period shall also file with the Commission the following information or documents relating to its power cost projections with a general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-23 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

B. All information should be provided or available electronically and, in the case of Excel spreadsheets, with all formulas intact including all hierarchy of linked spreadsheets. The term "PCM" herein refers to any power cost model used by the utility, or any subsequent enhancements to or replacements of the power cost model used in the utility's last prior general rate case. The term "workpapers" means the documents used to develop the inputs to the PCM. This may include such items such as contracts, emails, white papers, studies, utility computer programs, Excel spreadsheets, word process documents, pdf and text files, computer programs, or any other data or documents relied upon to support the cost details in the application. If the inputs used in the PCM were developed from a document, such as a contract, provide the contract with the PCM inputs highlighted.

C. Power Cost Modeling Data:

1. Workpapers that show the source, calculations and

details supporting the testimony, other exhibits and all PCM input data. The workpapers will include, at a minimum, copies of the net power cost report in Excel and the net power cost model database.

2. Identification of the time periods (Reference Period) used to determine input items (e.g., outage rates) in the PCM which are based upon an examination, average, etc. of a multi-year period.

3. Compilations of actual net power costs produced by the utility that were referenced in the testimony or exhibits, to the extent that actual power cost results are discussed or cited in the utility's testimony or exhibits.

4. A list and explanation of all modeling or logic changes or enhancements to the PCM that have been implemented since the last prior general rate case. This will include a statement of the direction and amount of change in net power costs resulting from each such change and documentation describing each Material change as well as PCM runs and workpapers quantifying the impacts of these changes.

5. Access to or a copy of the PCM model used by the utility to compute power costs in the Test Period.

6. The latest documentation for the PCM.

7. The current topology maps in the PCM along with an explanation for all the differences that have been made to the topology since the last prior general rate case and an explanation of why the changes were made. Include supporting documentation, such as contracts resulting in changes to the transfer capabilities used in the PCM.

8. All documents, workpapers, data or other information used by the utility in determining, setting, or calculating any PCM input, constraint, etc., including, but not limited to, where applicable:

a. market caps,

b. outage rates (planned and unplanned) including all backup data showing each outage (planned or unplanned, etc.) and duration (planned or unplanned) considered in the Reference Period, including NERC cause code, type of event, duration, energy lost, etc.,

c. the date and a copy of any forward price curve used, showing monthly heavy load hour and light load hour,

d. short-term firm transactions (including short-term firm indexed transactions and swaps), each transaction or contract will have a designation as to its purpose (i.e., trading, arbitrage or balancing.),

e. all contracts modeled in the PCM that were not included in or have been amended since the last prior general rate case, providing for each:

(i) A copy of the contract (in pdf or electronic format, if available), and

(ii) input assumptions related to the contract,

f. all fuel cost inputs,

g. heat rate curves for each resource, including the derivation of the heat rate curves,

h. identification of each instance in which the utility changed any maximum capacities, minimum up or down times or unit minimum capacities for thermal or hydro generators modeled in the PCM since the last prior general rate case,

i. each load adjustment,

j. inputs for Qualifying Facility or QF contracts,

k. screens applied to restrict uneconomic dispatch of resources,

l. start up fuel costs, start up O and M costs and any other form of start up costs modeled,

m. loss factor data used to develop the load forecast for the system and for each state for the most recent five calendar years and for the most recent five fiscal years; include a comparison of those loss factors to those that were used in developing loads for the PCM for the test period used in the case,

n. the system level loss factors assumed in any PCM used in the most recent (or current) rate cases for any other jurisdiction in which the utility operates,

o. the actual generation of each coal, gas, hydro and wind generating unit modeled in the PCM for each month for the Reference Period,

p. hourly generator logs for each wind, coal, gas and hydro unit modeled in the PCM for the Reference Period,

q. the schedule for each generation unit's planned and actual outages for the test period, the most recent calendar year and the next four calendar years,

r. hourly logs for all contracts modeled in the PCM, showing actual data (hourly sales or purchases) for the Reference Period,

s. the details of Short Term Firm and Non-Firm transmission used by the utlity during the Reference Period.

t. for each of the transmission contracts whose costs are included in the PCM, identify the purpose of the transaction, why it is used and useful in the test period, the amount of capacity or type of transmission service it provides, and where the capacity or service provided by this contract is modeled in the PCM,

u. data for the Reference Period or for the most recent four years available for all third party transmission imbalance transactions that have been included in Short Term Firm or secondary transactions during that period,

v. any links and other inputs for Short Term Firm (including any related to SP 15) and Non-Firm transmission modeling used in the PCM,

w. the hydro planned and unplanned outage rate,

x. to the extent that the utility uses any ramping adjustment in its case, information describing and detailing all ramping adjustments made (including all ramping energy assumed to be lost for each outage event modeled in the ramping analysis),

y. the costs of wind integration as modeled in the PCM, and

z. hedging contracts, already in place and those assumed for forecasting purposes.

R746-700-30. Information for an Alternative Cost Recovery for a Major Plant Addition Application Filed by an Electrical Corporation or a Gas Corporation.

An applicant submitting an alternative-cost-recovery-for-a-major-plant-addition application shall include the following information as part of the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods where applicable. If the same information was previously provided by the applicant in a prior proceeding in which the plant's construction or acquisition was approved by the Commission pursuant to 54-17-302, the applicant shall provide copies of such previously provided information with the application. If the plant's construction or acquisition was approved subject to conditions pursuant to 54-17-302, the information shall be provided as ordered by the Commission in the order approving the major plant addition subject to conditions. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-30 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information.

1. All documents and presentations that were provided to management, senior management and the Board of Directors of the utility and its affiliates related to the plant addition.

2. Copies of all Board of Directors' minutes of the utility and its affiliates where the plant was discussed, approved, reviewed, evaluated, or presented.

3. Details of the plant being acquired including its location, capacity, technologies used, project milestones or progress dates, projected in-service date and demonstrating that the plant addition is a major plant addition under 54-7-13.4.

4. Description of any changes, modifications, etc. to the existing utility plant/system that may be necessary to integrate the plant addition with the utility's system.

5. Information establishing the prudence of the plant addition, information addressing the provisions of 54-7-13.4, and the provisions of 54-17-302 and 54-17-303.

6. Information establishing the consistency of the plant addition to projected plant acquisitions in the utility's latest Integrated Resource Plan and its Action Plan. Show that the plant addition resource is as favorable or more favorable than the compared Integrated Resource Plan resource items in terms of least cost and least risk or explain why it need not.

7. Any and all documents and analyses that address the plant addition's projected costs, savings and benefits and demonstrate how and when the utility's ratepayers will see a net benefit from the plant addition and quantify the net benefit.

8. Where applicable, information on whether and how the plant addition has been or will be inspected as part of due diligence, including identification of who conducted or will conduct the inspection and copies of all reports or other documents prepared by the inspectors.

9. A list of all outside consultants or advisors used, or expected to be used by the utility in connection with the plant addition and all reports, including interim reports, prepared by outside consultants or advisors.

10. All internal reports that were prepared when analyzing the purchase or construction of the plant addition.

11. Where applicable, copies of contracts that are expected to be assumed following close of acquisition.

12. Where applicable, copies of all contracts between the utility and the seller or operator of the plant addition.

13. Where applicable, a history of the plant addition to be acquired including financial and performance characteristics for the past five years, or from the start of commercial operation, whichever is less.

14. Where applicable, information on the utility's understanding of the reasons why the seller is selling the facility.

15. Where applicable, information on the seller's book value of the plant.

16. An indication whether the seller will allow interested persons who have signed a confidentiality agreement with the utility access to the seller's books and records for audit, and what restrictions may apply to such access.

B. Financial and Revenue information.

1. Provide information of the revenues, costs and benefits arising from the plant addition, identifying any limits and conditions on forecast information/calculations.

2. Information on the net revenue impact of bringing the plant online and operating the plant within the utility's system compared to operations without the plant.

3. Justification for any acquisition premium the utility plans to include in rates and recover from ratepayers.

C. Capital cost, rate base and jurisdictional allocation information.

1. Information on how the utility plans to finance the construction or acquisition of the plant addition. This is to include the timing and amount of any equity, debt, or other security issuances and any documents to, or received from, any investment bankers or other entities regarding the issuance of any securities connected with the plant addition.

2. Information indicating whether the utility has discussed the plant addition with any rating agencies and provide any reports or rating agencies provided with respect to the plant addition. If not, indicate when it plans to discuss the plant addition with any rating agency.

3. Information on how much of the purchase price or construction costs the utility intends to place into rate base.

4. Information showing the amount and relating to any analysis of AFUDC associated with the plant addition.

5. Information on the utility's anticipated jurisdictional allocation for the plant addition and any change in allocation factors and other plant, revenue and expense/cost allocations arising from the plant addition.

D. Cost and Operating Expenses Information.

1. A complete analysis of all costs associated with constructing, acquiring and operating the plant for which the utility will seek recovery from Utah ratepayers and identify any costs for which no recovery will be sought from Utah ratepayers.

2. Information on all clearances, permits or other government regulatory authorizations necessary, to be modified and completed for the plant and their associated costs.

3. Information on any liquidated damages clause and early termination fees, penalties, or other expenses which may be incurred if the plant is not completed or acquired.

4. Information on whether that are any integration costs or fees (transmission, pipeline, etc.).

5. Information on any costs analysis analyzing bringing the plant online.

6. Information on how the plant addition will change and the amount of change on the utility's Operation and Maintenance costs.

7. All operating cost analyses that have been completed related to the plant addition.

8. The planned accounting treatment for the plant, including the proposed journal entries or other accounting entries for such planned accounting treatment.

9. A description of and the amounts for overhead, closing, contingent or any other costs for which the utility expects it will ask recovery as a result of the acquisition.

E. For an electrical corporation, the following Net Power Costs information.

1. The impacts of the plant addition on any utility power cost and production cost dispatch models. If any models are revised to accommodate the plant addition, the revised models will be available to the parties participating in the application proceeding.

2. A net power cost study (NPC) in the utility's production cost dispatch model that documents changes from previous net power cost estimates. All relevant workpapers and documentation to allow any other person to perform an independent analysis and verification of the NPC will be provided.

3. Show how the plant addition impacts planned outages, unplanned outages, and maintenance at the utility's generation resources.

R746-700-40. Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-40 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information

1. Historical results of operations information consisting of actual, unadjusted results of operations, including all

regulated costs and revenues, for an historical 12-month period used as a basis for the test period.

2. Adjusted results of operations for the same period. These adjustments shall include, but are not limited to, normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application.

3. Description and details for all additional adjustments necessary to arrive at the test period used in the general rate case application.

4. A description of any significant changes in accounting policies or procedures for the 12-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a future test period is used, any future changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

5. Information giving a fully referenced Part 64 and, where available, a Part 36 allocation. If no Part 36 allocation information is available, the utility shall provide an alternative permitting comparable cost of service allocations. Fully referenced means that sources of all total amounts are indicated and that source documents are included in the filed information. The names and sources of allocators to determine jurisdictional or non regulated portions shall be included in lines with the allocated amounts. The Part 64 allocation shall provide full allocation of all joint costs incurred by the utility for both non-regulated and regulated activities and affiliated companies.

6. A copy of each adjusting journal entry made with supporting documentation in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. The utility will identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

7. A copy of management letters received from the utility's outside auditors or responses to those management letters for the time period of the beginning of the historical period to the date of filing of the application.

8. A listing of internal audits, and copies thereof, conducted by or for the Company or its parent for the time period beginning with the historical period to the date of the application, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs are allocated or directly charged to Utah regulated operations included in the general rate case application.

9. Beginning with the start of the historical period, provide the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status. Include a personnel organization chart with names that provides line of authority and reporting for board members, management and mid-management including joint responsibilities for non-regulated affiliate responsibilities.

10. A detailed description of corporate restructurings and changes in affiliate relationships since the prior general rate case and also describe changes in the corporate and affiliate relationships between the historical period and the end of the test period used in the application.

11. Beginning with the two years prior to the historical period through the date of the application, provide the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same period, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

12. A detailed description of any changes in the utility's collection policies or write-off policies since the last general rate case.

13. A list of penalties and fines in the historical period and the test period and indicate in which accounts the associated amounts are included.

14. Description of all calculations and all supporting spreadsheets and explicit data source information for all numbers in the narrative portion of the application or any testimony and exhibits included with the application.

B. Tax adjustments

1. An exhibit explaining procedures used to calculate test period tax adjustments.

2. An adjustment summary for tax expenses for normalized results of operations.

3. Information explaining every adjustment that is done to test period tax expense and that is shown in the adjustment summary. Adjustments will be in "top sheet" form.

4. A list of, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

5. A copy of the current tax sharing agreement in which the company participates.

6. List all property held for future use included in rate base. Listed property shall not include any item included in plant in service in rate base and the pro forma balance. The description shall include:

a. Location of property;
b. Date of acquisition;
c. Original cost;
d. Accumulated depreciation;
e. net original cost;
f. Planned or expected in-service date; and
g. Planned or expected use of property.

7. Copies of supporting work papers on the account Property Held for Future Use which shall include an explanation of all additions and transfers, including:

a. Description of property;
b. Description of transaction; and
c. Amount.

C. An applicant need not file the following information or documents with a general rate case application, but shall have such information and documents available for delivery and shall include a certification with its application that this information and these documents have been prepared and are available at the time it files its general rate case application. Contemporaneously with the filing of an application, an applicant shall also deliver this information and these documents to the Division of Public Utilities.

1. The financial audit work papers for the most recent completed financial audit conducted by the utility's independent auditors. The utility will provide a letter authorizing the external audit firm to meet with requesting parties to discuss work papers with them and allow parties to make copies of selected work papers.

2. Any revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

3. Copies of the most recent State and Federal income tax returns in which the utility participated.

R746-700-41. Cost of Service and Rate Design Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Utah Class Cost of Service Study or alternative comparable class cost of service information based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

R746-700-50. Information for a General Rate Case Application for a Water Corporation.

An applicant shall be in compliance with the reporting requirements of R746-400 prior to submitting an application for a general rate case. If the applicant is not in compliance with that rule, the applicant shall first submit any missing reports prior to submitting an application for a general rate case. An applicant submitting a general rate case application shall provide the following information with the application:

A. General Information:

1. Most recent Division of Drinking Water certification/report.

2. Certificate of Public Convenience and Need Number granted by the Commission and its date.

3. Date the utility started operation.

4. The number of connections approved and current area served, which may be shown by service area map.

5. Ownership and officers.

6. Associated companies (if any).

7. A copy of its current tariff.

B. Engineering Information.

1. Source of water supply

2. Information for all Wells

3. Mains and meters information

4. Reservoirs information

5. Storage capacity

6. Service deficiencies and remedies

7. Service quality

8. Additions or improvements in the last five years

9. Any anticipated additions or improvements

10. Efforts to encourage conservation

C. Customer Connection Information

1. Each connection identified by unique lot number or address

2. The date first put into service

3. Whether metered or unmetered.

4. Whether classified as residential or commercial

5. The water usage per month or billing cycle, showing minimum and overage gallons used

6. The amount billed per month or billing cycle

7. The anticipated growth, showing minimum and overage gallons used

8. Water usage and billings projected for the next three years

9. Information on any secondary/irrigation water system (the same information as C. 1, 2, 5, 6, 7 and 8 above).

10. Identification whether secondary water is distributed through the culinary system.

D. Accounting and Financial Data, which shall include the prior two complete years and current up to the date of general rate case application, unless otherwise specified:

1. Identification (contact information) for any accountant used by the utility.

2. Copies of the General Ledger.

3. Copies of the Balance Sheet

4. Copies of the Income Statement

5. Pro Forma Income Statements, categorized by the National Association of Regulatory Utility Commissions, NARUC, System of Accounts, to include:

a. the prior two years of revenues and expenses, and

b. the projected revenues and expenses for the next three years, to include the Company's anticipated growth rate and requested rate increase.

6. A copy of or the utility's check register

7. Billing documentation/reports, tied back to the tariff rates

8. Information on the utility plant, including, but not limited to:

a. Acquisition date,

b. Acquisition price or cost,

c. Salvage value,

d. Expected useful life,

e. Annual depreciation amount per asset,

f. Accumulated depreciation per asset and reconciled to the total accumulated depreciation amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments),

g. If an asset was donated, the amount applied to Contribution in Aid of Construction per asset,

h. If donated, the accumulated amortization of the Contribution in Aid of Construction per asset and reconciled to the total accumulated amortization amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments), and

i. Projected future asset purchases for the next three years, providing the estimated acquisition date and price.

9. Copies of tax returns for the prior two complete years,

10. Information on all Notes Payable, Loans, and other Obligations, This will include all outstanding and those retired within the past two years, including:

a. Interest rate,

b. Beginning date,

c. Date of last scheduled payment (the Loan pay-off date), and

d. Amount of payment

E. Customer Notice Information

1. A copy of any notice sent to customers notifying them that the utility is seeking a rate increase.

R746-700-51. Cost of Service and Rate Design Information for a General Rate Case Application for a Water Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Class Cost of Service Study, if one has been prepared, based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

KEY: utilities, filings, applications, major plant additions
September 23, 2009 **54-7-12(1)(b)(ii)**
54-7-13.4(1)(a)(ii)

R850. School and Institutional Trust Lands, Administration.
R850-40. Easements.
R850-40-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

R850-40-150. Planning.

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and

2. Evaluate and respond to comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice is intended to provide information to any responsible authority wishing to assert a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application") The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 90 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry. Other responsible authorities shall have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 30 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.

R850-40-300. Easement Acquisition.

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

(a) prescription,

(b) adverse possession, or

(c) any other legal doctrine except as provided by statute.

R850-40-400. Easement Charges.

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

R850-40-500. Surveys.

1. Anyone desiring to perform a survey on trust land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement.

2. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements.

3. The notice shall also contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director.

4. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

R850-40-600. Minimum Charges for Easements.

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

R850-40-700. Application Procedures.

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute

and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director may consider the following factors:

A) the fee established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

R850-40-1700. Termination of Easement.

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

1. In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the easement as provided in R850-4.

2. This administrative charge shall not be construed as rent.

3. In lieu of this charge, the agency may allow a grantee to pay a one-time negotiated charge.

KEY: natural resources, management, surveys, administrative procedures
October 22, 2009 53C-1-302
Notice of Continuation June 27, 2007 53C-2-201(1)(a)
53C-4-203

R850. School and Institutional Trust Lands, Administration.
R850-140. Development Property.
R850-140-100. Authorities.

This rule implements Sections 6, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a) and Section 53C-4-101, which authorize the director of the School and Institutional Trust Lands Administration to establish rules and criteria for the disposition of trust lands.

R850-140-200. Purpose of Development Property Rules.

This rule permits the agency to designate trust land as development property and thereby

1. subject agency activities in connection with such properties to this rule; and

2. exempt agency activities in connection with such properties from the rules listed in R850-140-1000.

R850-140-250. Definitions.

For the purposes of this rule:

1. Development Property: a parcel of trust land that has been designated a development property pursuant to the director's determination that the parcel meets the criteria established in R850-140-300(1).

2. Development Transaction: a transaction entered into by the agency for the purpose of generating financial returns to the trust from real estate development of a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and Other Business Arrangements with respect to development properties.

3. Joint Venture: a transaction in which the agency contributes trust assets to a joint undertaking in which such assets may be subject to risk of loss, including without limitation a transaction in which the agency becomes a member of a limited liability company in exchange for the commitment of trust assets.

4. Other Business Arrangement: a transaction other than a joint venture which involves similar risk of loss of trust assets as a joint venture and which involves material reliance on the economic performance of a third party or other contingent events to generate expected returns. The non-subordinated lease of trust property for development purposes, with the trust's returns based upon a percentage of final property sales, is not an Other Business Arrangement.

5. Supporting Transaction: a transaction entered into by the agency for the purpose of preparing for or supporting real estate development on trust lands, but not directly conveying trust lands for real estate development purposes. Supporting transactions include without limitation: exchange, acquisition or conveyance of lands for assemblage or configuration of development projects; agreements with local government entities with respect to development entitlements and provision of infrastructure; rights-of-entry, dedications and easements for development improvements and amenities on trust lands; and leasing or conveyance of trust lands for necessary development infrastructure and amenities.

R850-140-300. Designation of Development Property.

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:

(a) The property is located in or near an urban area of the State or, in more rural locations, the property is of a character suitable for current or future commercial, industrial, resort, residential or other real estate development activities; or

(b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the probable highest and best use for the property is for development purposes.

2. The director shall maintain a database of each property designated as a development property. The director may remove property from development designation in his discretion as deemed appropriate for the best interests of the trust beneficiaries.

R850-140-350. Planning.

1. Prior to designating a property as a development property, the agency shall submit the proposed designation to the Resource Development Coordinating Committee (RDCC), and evaluate and respond to comments received through the RDCC process. Participation in the RDCC process shall constitute compliance with Subsection 53C-2-201(1).

2. If the agency chooses to participate in local government planning and entitlement processes, such participation constitutes an additional degree of planning supplemental to the RDCC process, but is not required under Subsection 53C-2-201(1).

R850-140-400. Development Transactions - General Provisions.

1. Subject to the board notice and approval provisions contained in R850-140-500 and R850-140-600, the agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property.

2. Prior to entering a development transaction, the agency shall initiate an appropriate advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, internet, signage, direct mail or other appropriate marketing methods.

3. In negotiating development transactions, the agency shall undertake appropriate due diligence with respect to the proposed transaction, including consideration of the following criteria:

(a) The ownership, character, reputation, financial status, credit and litigation history and prior real estate development experience of the party with whom the development transaction is proposed.

(b) The financial attributes of the proposed development transaction.

(c) The legal structure of the proposed development transaction.

(d) The potential effects of the proposed development transaction upon nearby trust lands; and

(e) Whether the proposed transaction will bring the highest long-term return to the trust compared to other reasonably foreseeable alternatives.

4. Development transactions shall result in the trust receiving not less than fair market value for the sale, use or exchange of the development property in question.

5. The purchase, sale or exchange of land in connection with a development transaction shall be supported by either an appraisal or a detailed internal analysis of value.

6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. No party to a proposed development transaction shall have any vested rights in the transaction until the formal contract documents have been approved by the agency representative of the attorney general's office, approved by the board if required by rule or statute, approved and executed by the director, and delivered.

R850-140-500. Development Transactions -- Approval of Minor Development Transactions.

1. For purposes of this rule, a minor development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of less than $5 million; or

(b) if the proposed development transaction is a joint venture or Other Business Arrangement, involves a projected commitment of trust lands or assets of less than $2 million.

2. The agency shall provide the board with the following information with respect to a proposed minor development transaction:

(a) a description of the parties to and terms of the proposed transaction;

(b) an economic analysis of the proposed transaction;

(c) a description of the competitive/advertising process used in soliciting offers for the transaction;

(d) a declaration of staff conflicts of interest, if any;

(e) if the transaction will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets; and

(f) other relevant information derived from the agency's due diligence activities.

3. The board must approve any proposed minor development transaction that is a joint venture or Other Business Arrangement in accordance with Subsection 53C-1-303(4)(e).

4. The director may approve any proposed minor development transaction that is not a joint venture or Other Business Arrangement after compliance with R850-140-500(2).

5. The board or director, as appropriate, may approve, conditionally approve, or reject any proposed minor development transaction consistent with their fiduciary obligations.

R850-140-600. Development Transactions -- Approval of Major Development Transactions.

1. For purposes of this rule, a major development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of $5 million or more; or

(b) involves a projected commitment of trust lands or assets of $2 million or more if the proposed development transaction is a joint venture or Other Business Arrangement.

2. Prior to entering negotiations for a major development transaction, the agency shall provide the board with the following information:

(a) relevant information concerning the property and the financial aspects of a possible transaction, including:

(i) property value;

(ii) financial goals for a proposed transaction;

(iii) timeliness of a proposed transaction; and

(iv) type of transaction contemplated;

(b) a summary of the anticipated competitive process and advertising program to be utilized in soliciting proposals; and

(c) other information requested by the board to assist it in evaluating the proposed transaction.

3. Prior to seeking final board approval of a major development transaction, the agency shall provide the board with the following information:

(a) a statement of the key terms of the transaction;

(b) the results of the agency's due diligence activities under R850-140-400(3)(a);

(c) a projected financial pro forma for the transaction;

(d) the results of the competitive process and advertising process utilized to select the proposed transaction; and

(e) a declaration of staff conflicts of interest, if any;

(f) a description of legal risks assumed by the trust;

(g) an analysis of the financial strength and commitment of the parties to the transaction; and

(h) if the transactions will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets.

4. The board must approve any proposed major development transaction prior to the director's execution of the transaction.

5. The board or director, as appropriate, may approve, conditionally approve, or reject proposed major development transactions consistent with their fiduciary obligations.

R850-140-700. Amendments to Development Transactions.

1. The agency may amend development transactions subject to the conditions contained in Subsections R850-140-700(2) through(4).

2. No amendment to a development transaction shall result in the trust receiving less than fair market value for the sale, use or exchange of the property in question.

3. The director shall deliver a summary description of the terms of proposed material amendments to minor or major development transactions to the board with sufficient detail to permit the board to review the proposed amendment consistent with its statutory duties.

4. All amendments that will materially modify the financial terms of a joint venture, Other Business Arrangement, or major development transaction must be approved by the board.

R850-140-800. Supporting Transactions.

1. The agency may enter into supporting transactions as necessary to promote prudent and profitable development of trust lands designated as development properties.

2. The purchase, sale or exchange of land in connection with a supporting transaction shall be supported by either an appraisal or a detailed internal analysis of value.

3. The board must approve any proposed supporting transaction that involves the purchase, sale or exchange of land having a value in excess of $500,000.00.

R850-140-900. Deviation from Rules.

In situations where the board determines that an economic opportunity favorable to the trust beneficiaries may otherwise be lost, or other good cause exists that is in furtherance of the statutory obligations of the board, the board may authorize the agency to deviate from the transactional approval processes set forth in this rule, so long as the board and agency's actions are otherwise in compliance with law.

R850-140-1000. Exemption From Rules.

The agency, in connection with its activities in managing and conveying development property, shall be subject to all rules applicable to the agency, except the following, which shall not be applicable:

(a) R850-3-300. Application Forms.

(b) R850-3-400. Application Processing.

(c) R850-4. Application Fees and Assessments.

(d) R850-30. Special Use Leases.

(e) R850-40. Easements.

(f) R850-41. Rights-of-Entry.

(g) R850-80. Sale of Trust Lands. (Except R850-80-250.)

(h) R850-90. Land Exchanges.

KEY: development, land sale, real estate

October 22, 2009 53C-2-201

Notice of Continuation September 14, 2006 53C-4-101(1)

53C-4-103

R895. Technology Services, Administration.
R895-13. Access to the Identity Theft Reporting Information System Database.
R895-13-1. Purpose.

Pursuant to Utah Code Ann. Subsection 67-5-22(4)(iii) the Identity Theft Reporting Information System (IRIS) database may be accessed by vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office. Approved vendors and government agencies may receive data from IRIS/UCJIS pushed to them via state web services, and they may post data to IRIS/UCJIS via state web services.

R895-13-2. Authority.

The rule is issued by the Chief Information Officer, with the approval of the Office of the Attorney General under the authority of Utah Code Ann. Subsection 67-5-22(3)(a) and Subsection 67-5-22 (4)(iii).

R895-13-3. Definitions.

(a) "Identity theft" is a crime used to refer to fraud that involves someone pretending to be someone else in order to steal money or get other benefits.

The terms used in this rule are defined in Section 63G-4-103. In addition, "division" means the Division of Enterprise Services, and "department" means the Department of Technology Services.

KEY: IRIS, identify theft
October 26, 2009 **63G-4-202**
63F-1-206

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(7) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(8) "Personal Property" means articles associated with a person, as property having more or less intimate relation to person, including clothing, medicine, tools, home/family etc. Items not considered as personal property are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle-stereos, speakers, or CD changers and will remain in the vehicle.

(9) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(10) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(11) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(12) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repo towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(13) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Tow Vehicle Classifications will be used when determining authorized fees. Information regarding the (GVWR) to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(1) "Light Duty" means any towed vehicle with a (GVWR) 10,000 pounds or less;

(2) "Medium Duty" means any towed vehicle with a (GVWR) between 10,001 and 26,000 pounds;

(3) "Heavy Duty" means any towed vehicle with a (GVWR) or (GCWR) 26,001 pounds and greater.

(14) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Non-consent police generated tows are required to maintain at least $750,000 of insurance minimum liability.

(2) Tow Truck Motor Carriers performing non-consent non-police generated tows and consent tows are required to maintain at least $1,000,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to the Tow Truck Motor Carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) issuance of a cease-and-desist order as authorized by section 72-9-303; and

(c) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).

R909-19-7. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603.

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as authorized by 41-6a-1406.

(d) If reporting is not completed within the time frame, the Tow Truck Motor Carrier or operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.

R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by 41-6a-1406(11).

(2) Tow Truck Motor Carriers may charge an administrative fee up to but not exceeding $5.00 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles.

R909-19-9. Certification.

There are three (3) required certification requirements required by the Department, they are as follows:

(1) Tow Truck Driver Certification:

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards. These standards of conduct and proficiency may be tested and certified through:

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program

(iv) Other driver testing certification programs may be approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on the above mentioned certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4559.

(c) Tow Truck Motor Carriers shall ensure that all driver's are:

(i) Properly trained to operate tow truck equipment;

(ii) Licensed, as required under UCA 53-3-101,et al. Uniform Driver License Act; and

(iii) Property certified.

(2) Tow Truck Vehicle Certification:

(a) All tow trucks shall be inspected and certified biannually;

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at http://www.udot.utah.gov/index.php/m=c/tid=396 or by calling 801-965-3871.

(c) Upon certification of vehicle a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle file and available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification:

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-10. Certification Fees.

The Department may charge Tow Truck Motor Carrier's a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-11. Information Required on Towing Receipt.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;
(b) address;
(c) phone number;
(d) transportation and storage fees charged;
(e) name of company driver;
(f) unit number;
(g) license plate of the towed vehicle;
(h) make, model, and year of the towed unit, and;
(i) start and end time for services provided.

R909-19-12. Maximum Towing Rates. Non-Consent Police Generated Tows.

(1) $145 per hour, per unit, when towing a "Light Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(2) $240 per hour, per unit, when towing a "Medium Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(3) $300 per hour, per unit, when towing a "Heavy Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(4) If a tow truck apparatus is mechanically connected to

a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) As fuel increases .50 per gallon from the base rate of $3.00, a surcharge shall be allowed of 10% of the base rate. Conversely, if prices drop, they will decrease by the same amount.

(a) To determine the average daily per gallon diesel cost please refer to "http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp"

(6) Recovery charges, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(7) Pursuant to Utah Code Ann. Section 72-9-603 it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Tow Truck Lighting 41-6a-161. Strobe lights are not allowed on Tow Trucks. The acceptable light colors are orange and yellow.

R909-19-13. Maximum Non-Consent Non Police Generated Towing Rate.

(1) The maximum rate for a "Light Duty" vehicle is $121 per tow.

(2) The maximum rate for a "Medium Duty" vehicles is $200 per tow.

(3) The maximum rate for a "Heavy Duty" vehicle is $250 per tow.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Utah Code Ann. Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Non-Consent Tows.

(1) $25 Maximum per day, per unit, for outside storage of "Light Duty" vehicles;

(2) $30 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) $45 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles;

(4) $70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) $100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) $150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Utah Code Ann. Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-15. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-16. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-17. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-18. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the

Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-20. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issued related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the Motor Carrier Division office.

R909-19-21. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

R909-19-22. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-23. Information to be Included on Company's Receipt.

Charges for services provided must be listed and itemized on a receipt and provided t the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.

R909-19-24. Personal Property.

Property, which is deemed, as personal property shall be given to the property owners of the vehicle regardless of payment for rendered services.

KEY: safety regulations, trucks, towing, certifications
October 15, 2009 **41-6a-1404**
Notice of Continuation September 25, 2006 **41-6a-1405**
41-6-104
53-1-106
53-8-105
63J-1-303
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R916. Transportation, Operations, Construction.
R916-4. Construction Manager/General Contractor Contracts.
R916-4-1. Purpose.

(1) Pursuant to Utah Code Ann. Section 63G-6-207, this rule establishes the Department's ability to procure transportation construction under the Construction Manager/General Contractor (CM/GC) approach authorized in Utah Code Ann. Section 63G-6-502. CM/GC seeks to provide: a savings of time, and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses, early and continuous and coordination of efforts.

R916-4-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 6; Title 63G, Chapter 3; and Sections 72-1-201, 72-5-114, and 72-6-105.

R916-4-3. Policy.

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GA method of project delivery. CM/GC is not recommended for every project; therefore, the decision to use the method must take into account the individual specific needs of the project.

R916-4-4. Request for Proposals (RFP).

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

R916-4-5. Evaluation Team.

(1) The Department may establish a team for evaluating the technical proposals consisting of not more than 7 people.

(2) At least one member of the team may be a registered professional engineer; and

(3) At least one member may be a senior management employee of a licensed contractor.

R916-4-6. Evaluation of Proposals and Discussions with Proposers.

(1) The Department shall evaluate proposals, in accordance with the evaluation factors set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors at least demonstrate their:

(a) construction experience in similar projects;

(b) financial, manpower and equipment resources available for the project;

(c) experience in other negotiated contracts; and

(d) preconstruction or design support experience.

R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director or designee shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Ann. Sections 63G-6-504 through 507 to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Ann. Sections 63G-6-501 through 507, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-4-8. Required Contract Clauses.

The CM/GC contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-7, subject to such modifications as the Executive Director or designee believes appropriate. Any modifications shall be supported by a written determination of the Executive Director or designee that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-4-9. Selection.

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level; or

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department.

R916-4-10. Award of Contract.

(1) The Contract will be awarded in two phases. The first is for preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

(2) The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a Guaranteed Maximum Price for construction services has been successfully negotiated. In the event that a Guaranteed Maximum Price is not negotiated, the Department will not award construction phase of the contract.

(3) In order to accelerate completion, incremental construction phases may be awarded after Guaranteed Maximum Prices are negotiated for each phase.

(4) The Department is not required to ever award a contract. Following award, however, a contract shall be executed and notice given to the successful CM/GC proposer to proceed with the work.

KEY: transportation, highways, contracts, construction
June 27, 2005 **63G-6-502**
63G-6-207
72-1-201

R926. Transportation, Systems Planning and Programming.
R926-12. Share the Road Bicycle Support Restricted Account.
R926-12-1. Purpose.

This rule provides procedures and requirements for an organization to apply to the Department of Transportation to receive a distribution from the Share the Road Bicycle Support Restricted Account.

R926-12-2. Authority.

This rule is enacted under the authority granted to the Department of Transportation by Section 72-2-127(6)(c).

R926-12-3. Definitions.

Terms used in these rules are defined as follows:

(a) "Share the Road Bicycle Support Restricted Account" means the restricted account created in the General Fund into which monies are deposited from the purchase of Share the Road special group license plates, appropriations by the Legislature, private contributions, and donations or grants.

(b) "Qualified applicant" means an organization that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code, and has as part of their primary mission the promotion and education of safe bicycle operations, safe motor vehicle operation around bicycles, healthy lifestyles, and contributes to the start-up fees associated with providing a Share the Road special group license plate.

R926-12-4. Proposals.

A qualified applicant may apply to the Department of Transportation for funding from the Share the Road Bicycle Support Restricted Account for use in support of safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles.

An applicant shall provide to the Department as part of an application:

(a) contact information for the applicant;

(b) proof that the applicant is tax exempt under Section 501(c)(3), Internal Revenue Code;

(c) proof that the applicant promotes safe bicycle operation, safe motor vehicle operation and healthy lifestyles as a primary part of its mission;

(d) a statement of the purpose for which the application is submitted, along with an explanation of how the applicant would use a disbursement of money to promote safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles; and

(e) an explanation of the internal management controls and financial controls of the applicant that would insure that any funds received would be used only for authorized purposes.

R926-12-5. Selection of Recipients.

The Department shall select recipients based on available funds, eligibility of the applicant, and verification of effective and efficient use of funds to promote safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles.

R926-12-6. Distribution of Funds.

In April and October of each year, the Department will review applications and approve funding distribution from the Share the Road Bicycle Support Restricted Account. Notice of request status will be provided to the applicant and funding distributions made by the end of the months specified in this section.

The Department is authorized to expend up to 5% of the monies appropriated to administer account distributions to eligible applicants.

KEY: share the road, bicycle support, restricted, account

October 22, 2009 **72-2-127**