R35. Administrative Services, Records Committee.
R35-1a. State Records Committee Definitions.
R35-1a-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63G-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63G-2-205 and Subsection 63G-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63G-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63G-2-403(4)(a).

(e) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63G-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63G-2-403(11), Utah Code.

(g) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.

(h) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63G-2-403, Utah Code.

KEY: state records committee, records appeal hearings, government documents
March 8, 2005 63G-2-502(2)(a)
Notice of Continuation February 22, 2010

R81. Alcoholic Beverage Control, Administration.
R81-4E. Resort Licenses.
R81-4E-1. Licensing.

Resort licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4a-202(4), 32A-4a-203, 32A-4a-305(30), and 32A-4a-401(14).

R81-4E-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a resort license when the requirements of Sections 32A-4a-202, -203, and -205 have been met, a completed application has been received by the department, and the resort premises have been inspected by the department.

(2) Pursuant to 32A-4a-204(3) and 32a-4A-302(1), each sublicense of a resort license is not required to:

(a) submit an application or renewal application that is separate from the resort license application;

(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.

(3) Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

R81-4E-3. Bonds.

No part of any corporate surety or cash bond required by Section 32A-4a-205, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4E-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4a-202(1)(i) and (j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4E-5. Resort License Liquor Order and Return Procedures.

The following procedures shall be followed when a resort licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first served basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4E-6. Resort Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32A-4a-305(18). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4E-7. Sale and Purchase of Alcoholic Beverages in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to a restaurant sublicense or limited restaurant sublicense, alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant sublicense shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) Liquor dispensing shall be in accordance with Section 32A-4-106; and Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4E-8. Liquor Storage.

With respect to restaurant, on-premise banquet, resort spa, and club sublicenses, liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area as approved by the department.

R81-4E-9. Alcoholic Product Flavoring.

Resort licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in

beverages only during the authorized selling hours allowed by law. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No resort employee under the age of 21 years may handle alcoholic product flavorings.

R81-4E-10. Table and Counter Service.

A wine service may be performed by the server at the patron's table or counter for wine either purchased at a restaurant, limited restaurant, club, or resort spa sublicensed premises or carried in by a patron. The wine may be opened and poured by the server.

R81-4E-11. Consumption at Patron's Table or Counter in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to restaurant sublicenses and limited restaurant sublicenses, a patron's table or counter may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table or counter so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4E-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each restaurant, limited restaurant, on-premise banquet, resort spa, and club sublicensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer. With respect to on-premise banquet sublicenses, this list or menu need only be available to the host of a contracted banquet. With respect to limited restaurant sublicenses, the list or menu may only include wine, heavy beer, and beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A sublicensee or employee of a sublicensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4E-13. Identification Badge.

Each employee of a sublicensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The sublicensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4E-14. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105(47), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:

(1) When the entire area is closed to the general public for the private function or event, or

(2) When an entire room or area within the premises such as a private banquet room is closed to the general public for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the facility.

(3) This section does not apply to private banquet events conducted under the on-premise banquet sublicense.

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

(a) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as, but not limited to, massages, facials, hair care, and nail care. Treatment providers must be licensed under Title 58, Division of Professional Licensing Act. The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

(2) Application. Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

(3) Minors in Lounge or Bar Areas.

(a) Pursuant to 32A-4a-305(24), a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

(b) "Lounge or bar area" includes:

(i) the bar structure as defined in 32A-1-105(4);

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(c) A minor who is otherwise permitted to be on the premises of a resort spa may momentarily pass through the resort spa's lounge or bar area en route to those areas of the resort spa where the minor is permitted to be. However, no minor shall remain or be seated in the resort spa's bar or lounge area.

R81-4E-16. Applicability of Rules.

(1) 32A-4a-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32A for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32A-5-107 that are applicable to a club licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any commission rule for the type of license applicable to the sublicense, except where otherwise provided.

KEY: alcoholic beverages
January 26, 2010 **32A-1-107**

R131. Capitol Preservation Board (State), Administration.
R131-14. Parking on Capitol Hill.
R131-14-1. Purpose and Authority.

(1) The purpose of this rule is to define and implement Board policy regarding parking at the Utah State Capitol Hill Complex.

(2) This rule is promulgated pursuant to Section 63C-9-301, Utah Code.

R131-14-2. Parking Assignments.

(1) Parking assignments on Capitol Hill is the responsibility of the Capitol Preservation Board's (CPB) Executive Director or designee.

(2) The identification and assignment of reserved parking spaces shall:

(a) meet the statutory requirements of Section 36-5-1 and any delegation by the Legislative Management Committee; and

(b) all remaining parking shall be distributed between all other Elected Officials, their staff and departments with preference going to the Elected Officials and their staff.

R131-14-3. Disabled Parking Assignments.

(1) The Capitol Preservation Board maintains accessible parking spaces as specified by the Americans with Disabilities Act (ADA) and the ADA Accessibility Guidelines (ADAAG). The number and placement of public, reserved and accessible parking spaces were established in agreement with the Utah State Building Official. All provisions of this rule shall be interpreted consistent with the ADA and applicable Federal law. In case of conflict, the provisions of the ADA and applicable Federal law shall supersede the provisions of this rule.

(2) Due to the limited number of available spaces, the assignment of reserved accessible spaces shall be made as follows:

(a) Agencies shall give first priority to individuals who have qualified for a parking accommodation pursuant to the Americans with Disabilities Act.

(b) Agencies shall give second priority to individuals who have a "permanent disabled parking placard" from the Utah State Tax Commission Division of Motor Vehicles.

(c) Agencies shall give third priority to individuals with "temporary disabled parking placards" from the Utah State Tax Commission Division of Motor Vehicles for the duration of their temporary condition as determined by their healthcare provider, if a space is available.

(d) Individuals who have disabled parking placards and do not receive a reserved accessible parking space may park in available non-assigned accessible parking spaces located on the East side of the Capitol Hill Grounds.

(e) Unassigned, reserved accessible spaces in the underground parking plaza may be assigned to non-disabled Elected Officials or employees; however, when a request for an accessible space is made by an Elected Official or employee with a disabled parking placard, any available accessible parking space shall be relinquished to the Elected Official or employee with an accessible parking placard in accordance with the above-described priorities.

(f) In the event an accessible space is not available, employees may request individualized accommodations through their ADA coordinator who will conduct a confidential individualized assessment with the employee and/or Elected Official. If a parking accommodation is not granted at the agency level, parking accommodation appeals shall be directed to the ADA coordinator within the Division of Risk Management (801.538.9560), who will review the assessment with the employee and/or Elected Official and work with the CPB to implement reasonable accommodations if appropriate.

R131-14-4. Assignment Process and Procedures.

(1) Subject to Section 36-5-1, the CPB Executive Director will oversee and approve the number of parking spaces assigned to the legislature, executive and judicial branches of government. The CPB Executive Director may assign and designate areas of parking by departments, divisions or agencies of the executive and judicial branches. The CPB Executive Director shall provide space numbers to employees/Elected Officials of the legislative, executive and judicial branches, issue parking tags, personal data sheets and written agreements for each assigned individual to fill out and return to the CPB. The CPB Executive Director may require those assigned a parking space to execute a legal agreement protecting the State of Utah and the CPB, in accordance with a form reviewed by the Utah Attorney General's Office and the Division of Risk Management. The identification of persons with particular spaces shall be kept confidential by the CPB, the Department of Public Safety and any other State officials that receive such information in the course of State business, because the release of such information creates security and property risks.

(2) Upon the completion and signature of the personal data sheet and the written agreement, the space will be assigned and parking privileges will be added to the employee or official's access card. Those with disabilities assigned to an accessible space will need to provide a copy of the placard to the CPB Executive Director.

(3) Because of a limited number of parking spaces on the Capitol Hill Complex, it is necessary to transition parking for both Legislative Sessions and Interim Legislative Sessions. Notices to employees may be sent out from the CPB as a courtesy. However, it is the responsibility of the individual to know which days they may and may not have a reserved parking space as identified in their signed agreement.

(4) Any executive or judicial branch employee who intentionally violates their signed parking agreement may lose the privilege to park in the space identified in the parking agreement as well as have any entrance card or device deactivated, as determined by the CPB Executive Director. Any determination by the CPB Executive Director may be appealed to the Chair of the Board Operations and Budget Development Subcommittee. However, such determination by the Chair shall be final. The designation of a parking space in the Capitol Hill Complex is a privilege and not a right.

(5) Any violation of this rule may also be prosecuted under Section 63C-9-301(3), Utah Code.

KEY: parking spaces Capitol Hill Complex
February 22, 2010 63C-9-301

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

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

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

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

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

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

B. Definitions.

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

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

(3) "Express Authorization" means the agreement of the consumer expressed in a form that is evidenced by a written agreement signed by the consumer or by any electronically transferred authorization from the consumer that is stored, recorded, or retained by the supplier, such as a facsimile transmission, e-mail, telephonic, or other electronic means.

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

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

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

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

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

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

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

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

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the features displayed or listed in the advertisement would be deceptive.

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

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

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

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

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

TABLE

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

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

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

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

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

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

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

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

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

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

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

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

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

definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an advertised price within the time limits set forth in paragraph d. of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The meaning of "free".

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

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

(2) The meaning of "regular price".

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

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

(3) Frequency of offers.

(a) In order to establish a regular price over a reasonably substantial period of time, a single kind of consumer commodity should not be advertised with a "free" offer in a trade area for more than six months in any twelve-month period. At least 30 days should elapse before another such offer is promoted in the

same trade area. No more than three such offers should be made in the same area in any twelve-month period.

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

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

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

R152-11-5. Repairs and Services.

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

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of $50, a transcript or copy of the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. A transcript or copy of the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. It shall be a deceptive act or practice in connection with a consumer transaction involving all other services not covered under Section A for a supplier to:

(1) Intentionally understate or misstate the estimated cost of the services to be provided;

(2) Fail to obtain the consumer's express authorization prior to performing services that exceed a value of $50;

(3) Fail to obtain the consumer's express authorization for any change orders, cost increases, or other amendments to the parties' contract;

(4) Fail to give the consumer written documentation containing the terms of any warranty made with respect to labor, services, products, or materials furnished;

(5) Misrepresent that the supplier has the particular license, bond, insurance, qualifications, or expertise that is

related to the work to be performed;

(6) Misrepresent that the consumer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement;

(7) Fail to timely complete performance under the contract as represented unless the cause for the delay is beyond the supplier's control or the supplier obtains the consumer's express authorization to the supplier's delay;

(8) Wrongfully refuse to perform any obligation under a contract with the intent to induce the consumer to agree to pay a higher price than originally agreed to in the contract; or

(9) Misrepresent or mislead the consumer into believing that no obligation will be incurred because of the signing of any document, or that the consumer will be relieved of some or all obligations under a contract by the signing of any document.

R152-11-6. Prizes.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to notify in any way a consumer or prospective consumer that he has (1) won a prize or will receive anything of value, or (2) been selected, or is eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and explicitly discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. If a supplier states or implies a value to the prize or thing of value the true market value of such prize must be accurately stated. A supplier must further state that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesman will be visiting the consumer's or prospective consumer's residence; if such is the case.

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

R152-11-7. New for Used.

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

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

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

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

R152-11-8. Substitution of Consumer Commodities.

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

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

C. It will be assumed that a supplier had no intention to deliver, ship, or install the original ordered or substitute goods if the supplier fails to ship, deliver or install the goods within 30 days of the date of the order, purchase or of the notice of delay and fails to notify the purchaser of any delay or further delay; unless the supplier can show that it has made a good faith effort to ship, deliver or install the goods or to notify the purchaser of any delay or further delay within the prescribed period.

R152-11-9. Direct Solicitations.

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

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

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

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

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

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

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

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

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds $25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights

to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

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

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

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

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

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

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

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

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

R152-11-10. Deposits and Refunds.

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

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

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

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);

(b) The cash selling price;

(c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

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

(f) Any additional cost such as delivery charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R152-11-12. Negative Options.

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

R152-11-13. Travel Packages.

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

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

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

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

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

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

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

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

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

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

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

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13-11

R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.
R156-17b-101. Title.

This rule is known as the "Pharmacy Practice Act Rule".

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(11) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(13) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(16) "FDA" means the United States Food and Drug Administration and any successor agency.

(17) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(18) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(19) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(20) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(21) "Maintenance medications" means medications the patient takes on an ongoing basis.

(22) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(23) "MPJE" means the Multistate Jurisprudence Examination.

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

(25) "NAPLEX" means North American Pharmacy

Licensing Examination.

(26) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(27) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(28) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(29) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(30) "PTCB" means the Pharmacy Technician Certification Board.

(31) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(32) "Refill" means to fill again.

(33) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(34) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(35) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(36) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(37) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(38) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(39) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(40) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 31-NF 26), 2008 edition, which is official from May 1, 2008 through Supplement 2, dated December 1, 2008, which is hereby adopted and incorporated by reference.

(41) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(42) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

R156-17b-104. Organization - Relationship to Rule R156-1.

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

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(e), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division and are found to be in compliance with this chapter will be returned to the pharmacist-in-charge of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division and are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any

investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a pharmacist-in-charge.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a pharmacist-in-charge except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door;
(b) hospital clinic pharmacy;
(c) methadone clinics;
(d) nuclear;
(e) branch;
(f) hospice facility pharmacy;
(g) veterinarian pharmaceutical facility;
(h) pharmaceutical administration facility; and
(i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

(a) manufacturing;
(b) producing;
(c) wholesaling;
(d) distributing; and
(e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a pharmacist-in-charge licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a pharmacist-in-charge and include:

(a) medical gases providers;
(b) analytical laboratories
(c) durable medical equipment providers; and
(d) central order entry pharmacies.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a pharmacist-in-charge shall have one pharmacist-in-charge who is employed on a full-time basis as defined by the employer, who acts as a pharmacist-in-charge for one pharmacy. However, the pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The pharmacist-in-charge shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination(MPJE) with a minimum passing score as established by NABP.

(2) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken at the time of making application for licensure; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

R156-17b-303. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

(i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
(ii) hygiene and aseptic techniques;
(iii) terminology, abbreviations and symbols;
(iv) pharmaceutical calculations;
(v) identification of drugs by trade and generic names, and

therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current PTCB or ExCPT certification and passed the Utah law exam.

R156-17b-305. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure;

(b) submit a complete application for licensure as a pharmacist except the passing of the NABP and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the division issues the individual full licensure.

(3) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

(ii) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, he shall surrender his pharmacy intern license to the Division within 60 days unless an extension is required and granted by the Division in collaboration with the Board.

(4) In accordance with Subsections 58-17b-102(50), to be an approved preceptor, a pharmacist must meet the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed

pharmacist for not less than two years in any jurisdiction;

(c) not be currently under any sanction nor under any sanction at any time which when considered by the Division and the Board would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to only one pharmacy intern during a working shift; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns.

R156-17b-307. Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established by rule in Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

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

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the division.

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

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

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

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:

initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(10) Being in possession of a drug for an unlawful purpose:
initial offense: $500 - $1,000
subsequent offense(s): $1,500 - $5,000
(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:
initial offense: $100 - $500
subsequent offense(s): $1,000 - $2,5000
(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:
initial offense: $2,500 - $5,000
subsequent offense(s): $5,500 - $10,000
(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(19) Failure to follow USP-NF Chapter 797 guidelines:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(20) Failure to follow USP-NF Chapter 795 guidelines:
initial offense: $250 - $500
subsequent offense(s): $500 - $750
(21) Administering without appropriate guidelines or lawful order:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist in charge:
initial offense: $100 - $500
subsequent offense(s): $2,000 - $10,000
(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(25) Compounding a prescription drug for sale to another pharmaceutical facility:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:
initial offense: $500 - $1,000
subsequent offense(s): $2,500 - $5,000
(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:
initial offense: $250 - $500
subsequent offense(s): $2,000 - $10,000
(28) Failing to comply with the continuing education requirements set forth in this rule:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:
initial offense: $50 - $100
subsequent offense(s): $200 - $300
(30) Defaulting on a student loan:
initial offense: $100 - $200

subsequent offense(s): $200 - $500
(31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:
initial offense: $500 - $1,000
subsequent offense(s): $2,000 - $10,000
(32) Failing to comply with administrative inspections:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(33) Abandoning a pharmacy and/or leaving drugs accessible to the public:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(34) Failure to return or providing false information on a self-inspection report:
initial offense: $100 - $250
subsequent offense(s): $300 - $500
(35) Failure to pay an administrative fine:
Double the original penalty amount up to $10,000
(36) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(37) Failure to maintain an appropriate ratio of personnel:
Pharmacist initial offense: $100 - $250
Pharmacist subsequent offense(s): $500 - $2,500
Pharmacy initial offense: $250 - $1,000
Pharmacy subsequent offense(s): $500 - $5,000
(38) Unauthorized people in the pharmacy:
Pharmacist initial offense: $50 - $100
Pharmacist subsequent offense(s): $250 - $500
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $1,000 - $2,000
(39) Failure to offer to counsel:
Pharmacy personnel initial offense: $500 - $2,500
Pharmacy personnel subsequent offense(s): $5,000 - $10,000
Pharmacy: $2,000 per occurrence
(40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:
initial violation: $50 - $100
failure to comply within determined time: $250 - $500
subsequent violations: $250 - $500
failure to comply within established time: $750 - $1,000
(41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(42) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(43) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(44) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(57) Failure to comply with the pharmacist-in-charge standards:
initial offense: $500 - $2,000
subsequent offense(s) $2,000 - $10,000
(58) Failure to resolve identified drug therapy management problems:
initial offense: $500 - $2,500
subsequent offense: $5,000 - $10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;
(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(9) failing to identify licensure classification when communicating by any means;

(10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(11) allowing any unauthorized persons in the pharmacy;

(12) failing to offer to counsel any person receiving a prescription medication;

(13) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(14) failing to comply with the pharmacist-in-charge standards as established in Section R156-17b-603; and

(15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3).

R156-17b-601. Operating Standards - Pharmacy Technician - Scope of Practice.

In accordance with Subsection 58-17b-102(56), the scope of practice of a pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);

(k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review; and

(l) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) The licensed pharmacist on duty can, at his discretion, provide on-site supervision for up to three pharmacy technicians, who are actually on duty at any one time, and only one of the three technicians can be unlicensed.

R156-17b-602. Operating Standards - Pharmacy Intern - Scope of Practice.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(51), provided the pharmacy intern met the criteria as established in Subsection R156-17b-304(2).

R156-17b-603. Operating Standards - Pharmacist-in-charge.

The pharmacist-in-charge shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(a) packaging, preparation, compounding and labeling; and

(b) ensuring that drugs are dispensed safely and accurately as prescribed;

(2) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(3) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(4) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(5) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(6) education and training of pharmacy technicians;

(7) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(8) disposal and distribution of drugs from the pharmacy;

(9) bulk compounding of drugs;

(10) storage of all materials, including drugs, chemicals and biologicals;

(11) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(12) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(14) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(15) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(16) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(17) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner; and

(18) assuring that all personnel working in the pharmacy have the appropriate licensure.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the pharmacist-in-charge shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the

pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the pharmacist-in-charge shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the pharmacist-in-charge shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(6) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter must be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the closing, the pharmacist-in-charge shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the pharmacist-in-charge is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) General requirements for inventory of a pharmacy shall include the following:

(a) the pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records must be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

(e) the inventory may be taken either as of the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents must be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(4) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(5) Requirement for taking inventory when closing a pharmacy includes the pharmacist-in-charge, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

(7) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the date of expiration imprinted on the label.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standard for a pharmacist acting as a preceptor includes:

(1) supervising more than one intern; however, a preceptor may supervise only one intern actually on duty who is working for compensation in the practice of pharmacy at any one time. Interns who are doing educational, observational rotations can be supervised at two interns to one pharmacist ratio;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Reserved.

Reserved.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Counseling shall be:

(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;

(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and

(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.

(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

(a) date of the delivery;

(b) unique identification number of the prescription drug order;

(c) patient's name;

(d) patient's phone number or the phone number of the person picking up the prescription; and

(e) signature of the person picking up the prescription.

(8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Section 58-17b-609, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription

was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner must be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(3) and 58-17b-601(1), prescription orders may be issued by electronic means of communication according to the following:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Title 58, Chapter 37, Utah Controlled Substances Act and R156-37, Utah Controlled Substances Act Rules.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted

by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614. Operating Standards - Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) expiration date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) expiration date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing expiration dates shall be documented; and

(i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rules of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rules;

(g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(h) current FDA Approved Drug Products (orange book); and

(i) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

R156-17b-614a. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(7) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;
(C) record of drugs sent by the parent pharmacy;
(D) record of drugs received by the branch pharmacy;
(E) record of drugs dispensed;
(F) periodic inventories; and
(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614b. Operating Standards - Class B - Sterile Pharmaceuticals.

In accordance with Subsection 58-17b-601(1), the USP-NF Chapter 797, Compounding for Sterile Preparations, shall apply to all pharmacies preparing sterile pharmaceuticals.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum

information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publically traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(9) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(10) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(11) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(12) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs.

The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form; and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(13) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(14) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(15) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(16) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(17) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug

precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(18) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(19) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(20) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(21) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the pharmacist-in-charge; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

R156-17b-617. Operating Standards - Class E pharmacy.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

R156-17b-618. Change in Ownership or Location.

(1)(a) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility that proposes to change its location or ownership shall make application for a new license and receive approval from the division prior to the proposed change.

(b) Upon approval of the change in ownership or location, the original licenses shall be surrendered to the division.

(2)(a) In accordance with Section 58-17b-614, a licensed pharmaceutical facility that proposes to change its names without a change in ownership shall submit the request in writing upon a form provided by the division, no later than ten business days before the proposed name change. The request for a name change must be approved by the division prior to implementing the change.

(b) Upon approval of the name change, the original licenses shall be surrendered to the division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the pharmacist-in-charge may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The pharmacist-in-charge or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

KEY: pharmacists, licensing, pharmacies

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Notice of Continuation February 23, 2010	**58-17b-601(1)**
	58-37-1
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-101. Title.

These rules are known as the "Utah Controlled Substances Act Rules."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

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

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

These rules are adopted by the division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the division to administer Title 58, Chapter 37.

R156-37-104. 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.

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;
(j) certified nurse midwife;
(k) naturopathic physician;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door;
(ii) hospital clinic pharmacy;
(iii) methadone clinics;
(iv) nuclear;
(v) branch;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility;
(viii) pharmaceutical administration facility; and
(ix) sterile product preparation facility.
(n) Class C pharmacy located in Utah engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling; and
(iv) distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases providers; and
(ii) analytical laboratories.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the division; and
(b) shall pay the required fee as established by the division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall:
(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or
(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):
(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or
(ii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:
(a) qualifications to engage in practice with controlled substances; and
(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-304. Qualifications for Licensure - Examinations.

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the division on the subject of controlled substance laws.

R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the division all controlled substance license certificates issued by the division to the division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under these rules or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, these rules or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and these rules or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance,

each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being

prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the division after submission to the division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a division authorized agent as is specifically instructed by the division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The division shall not apply the provisions of the Controlled Substance Act or these rules in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact disc (CD);

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer method, including but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) As of October 1, 2008, each pharmacy or pharmacy group shall submit all data collected during the preceding seven days at least once per week. If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled. If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

(a) the pharmacy name;

(b) NABP number;

(c) the period of time covered by each submission of data;

(d) the number of prescriptions in the submission;

(e) the submitting pharmacist's signature attesting to the accuracy of the report; and

(f) the date the submission was prepared.

R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), the information required under Section 58-37-7.5 shall be submitted to the Division's database manager by licensees designated by the Division to participate in the real time reporting pilot program in the following formats:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact discs (CD);

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer methods, including, but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) Each pharmacy or pharmacy group shall enter and submit data required under Section 58-37-7.5 on a daily basis each day that the pharmacy or pharmacy group is open for business or the data reporting entity of the pharmacy or pharmacy group is open for business.

(3) The format for submission to the database shall be in accordance with the uniform formatting developed by the American Society for Automation in Pharmacy System (ASAP).

The Division may approve alternative formats.

(4) The pharmacist-in-charge of each reporting pharmacy or pharmacy group shall be responsible for compliance with this rule.

(5) In accordance with Subsection 58-37-7.8(1)(a)(i), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the database based upon information available at the time of dispensing to the ultimate user is eligible and may participate in the Real Time Pilot Program.

R156-37-609b. Controlled Substance Database - Limitations on Access to Real Time Database Information - Individuals Allowed to Access - Standards and Procedures for Access to Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), access to information contained in the controlled substance database is limited to individuals who are designated by the Division to participate in the real time pilot program, as follows:

(a) personnel employed by federal, state and local law enforcement agencies;

(b) pharmacists licensed to dispense controlled substances in Utah;

(c) practitioners licensed to prescribe controlled substances in Utah; and

(d) employees of the Department of Health who have previously been approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program.

(2) All individuals who are granted access to information in the controlled substance database via the real time pilot program shall provide any documentation requested by the Division's database manager to confirm the individual's identity. The individual will then be provided a username, password, and PIN number by which the individual will access the information contained in the database. Pursuant to Subsection 58-37-7.5 (9), (10), and (11), it is unlawful for an authorized user to allow another individual to use the authorized user's assigned username, password and PIN number.

(3) Personnel employed by federal, state, and local law enforcement agencies may access only information related to a current investigation involving controlled substances being conducted by that agency.

(4) Pharmacists licensed to dispense controlled substances in Utah may access only information related specifically to a current patient to whom that pharmacist is dispensing or is considering dispensing any controlled substance.

(5) Practitioners licensed to prescribe controlled substances in Utah may access only information related specifically to a current patient of the practitioner, to whom the practitioner is prescribing or is considering prescribing any controlled substance.

(6) Employees of the Department of Health who have been previously approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program may access only information in order to conduct scientific studies to evaluate opioid use and opioid-related morbidity and ways to reduce deaths and other harm from improper or risky prescribing and dispensing practices as codified in Section 26-1-36.

R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

(4) Any individual may request information in the database relating to that individual's controlled substances receipt history. An individuals may not request or receive an accounting of persons or entities that have requested or received information about the individual. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual's controlled substance receipt history under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom

database information is sought consistent with the requirements set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted including a research protocol for the project and a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

KEY: controlled substances, licensing
February 8, 2010 **58-1-106(1)(a)**
Notice of Continuation March 15, 2007 **58-37-6(1)(a)**
58-37-7.5(7)

R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rules.
R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of $5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view

and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project or original contractor may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(b) The parties identified in R156-38b-501(3)(a) may authorize a third party to file a notice of commencement on its behalf, as established in Subsection 38-1-27(9).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed, amended or corrected a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful

duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) A person who wishes to file a preliminary notice may authorize a third party to file the notice on the person's behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(3) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-33(1)(a)(i), the owner, original contractor, lender, title company or surety associated with the construction project may file a notice of completion.

(b) The parties identified in R156-38b-503(1)(a)(i) may authorize a third party to file the notice on its behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Notice of Completion shall be in accordance with Section 38-1-33(1)(d).

(3) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(d)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or generated to enable an automatic response system and documentation of response system shall include:

(i) the date requests for notification were accepted;

(ii) the method by which requests for notification are to be sent;

(iii) unique identification of the construction project;

(iv) the date a notification is sent in response to a requests for notification; and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) The designated agent shall meet or exceed the following data entry standards for alternate filings:

(i) a primary operator shall manually input information required by Subsection 38-1-31(2)(a);

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the

registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
August 22, 2006 38-1-30(3)
Notice of Continuation February 8, 2010

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rule.
R156-47b-101. Title.

This rule is known as the "Massage Therapy Practice Act Rule."

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or this rule:

(1) "Accrediting agency" means an organization, association or commission nationally recognized by the United States Department of Education as a reliable authority in assessing the quality of education or training provided by the school or institution.

(2) "Clinic" means performing the techniques and skills learned under the curriculum of an accredited school while in a supervised student setting.

(3) "Direct supervision" as used in Subsection 58-47b-302(3)(e) means that the apprentice supervisor, acting within the scope of the supervising licensee's license, is in the facility where massage is being performed and directs the work of an apprentice pursuant to this chapter under Subsection R156-1-201a(4)(a) while the apprentice is engaged in performing massage.

(4) "FSMTB" means the Federation of State Massage Therapy Boards.

(5) "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(6) "Massage client services" means practicing the techniques and skills learned as an apprentice on the public in training under direct supervision.

(7) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(8) "Recognized school" means a school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that jurisdiction.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(1)(e) in Section R156-47b-502.

R156-47b-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 47b.

R156-47b-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.

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curricula, apprenticeship curricula, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

R156-47b-302. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) Curricula must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curricula shall be a minimum of 600 hours and shall include the following:

(i) anatomy, physiology and kinesiology - 125 hours;

(ii) pathology - 40 hours;

(iii) massage theory including the five basic Swedish massage strokes - 285 hours;

(iv) professional standards, ethics and business practices - 35 hours;

(v) sanitation and universal precautions including CPR and first aid - 15 hours;

(vi) clinic - 100 hours; and

(vii) other related massage subjects as approved by the Division in collaboration with the Board.

(c) In addition to the curriculum requirements of Subsection R156-47b-302a(1)(b), new curricula shall include the major content areas, but are not required to meet the percentage weights of the National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB) Content Outline, published January 2010, and the National Certification Examination for Therapeutic Massage (NCETM) Content Outline, published January 2010 which are adopted and incorporated by reference.

R156-47b-302a. Qualifications for Licensure - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must provide documentation of:

(a)(i) graduation from a licensed or recognized school outside the state of Utah with a minimum of 500 hours;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(b)(i) foreign education and training approval by NCBTMB as evidenced by current NCBTMB certification; and

(ii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(c)(i) completion of an equivalent apprenticeship program outside the state of Utah;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 4,000 hours.

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass one of the following examinations:

(i) the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB);

(ii) the National Certification Examination for Therapeutic Massage (NCETM);

(iii) the National Examination for State Licensure (NESL);

or

(iv) the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx).

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" shall pass the FSMTB MBLEx.

(3) Applicants for licensure as a massage apprentice shall pass the Utah Massage Law and Rule Examination.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised passes the FSMTB MBLEx and becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);

(3) if an apprentice being supervised fails the FSMTB MBLEx three times:

(a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the FSMTB MBLEx;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(5) train the massage apprentice in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory - 50 hours;

(d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client service - 300 hours;

(f) hands on instruction - 310 hours;

(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;

(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(8) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;

(9) make available to the division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the division;

(11) notify the division within ten working days if the apprenticeship program is terminated;

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(d) only be performed on the public; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, may disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-47b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.

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

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;

(6) failure to use appropriate draping procedures to protect the client's personal privacy; and

(7) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of

Practice", September 17, 2005 edition, which is hereby incorporated by reference.

R156-47b-601. Standards for Animal Massage Training.

In accordance with Subsection 58-28-307(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:

(1) quadruped anatomy;

(2) the theory of quadruped massage; and

(3) supervised quadruped massage experience.

KEY: licensing, massage therapy

February 22, 2010	**58-1-106(1)(a)**
Notice of Continuation January 31, 2006	**58-1-202(1)(a)**
	58-47b-101

R156. Commerce, Occupational and Professional Licensing.
R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule.
R156-55d-101. Title.

This rule is known as the "Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Individual employed", as used in Subsection 58-55-102(2), means an individual who is an employee of a licensed burglar alarm company and who has or could have access to knowledge of specific applications.

(2) "Employee", as used in Subsections 58-55-102(14) and R156-55d-102(1), means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

(3) "Knowledge of specific applications", as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-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 55.

R156-55d-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.

R156-55d-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of a current photo identification for each individual for whom fingerprints are required under Subsection (1)(b). Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of American or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of a current photo identification for the applicant. Acceptable identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are established as follows:

(1) an applicant shall have within the past ten years:

(a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or

(b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company;

(2) all experience under Subsection (1) shall be under the immediate supervision of the applicant's employer as defined in Subsection 58-55-102(20);

(3) all experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company;

(4) 2,000 hours of work experience constitutes one year (12 months) of work experience;

(5) an applicant may claim no more than 2,000 hours of work experience in any 12 month period; and

(6) no credit shall be given for experience obtained illegally.

R156-55d-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55d-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(k)(ix)(A)are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file

with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than $300,000 for each incident, and not less than $1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(k)(vi) and (3)(l)(iii), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;

(e) fraud;

(f) forgery;

(g) perjury, obstructing justice and tampering with evidence;

(h) conspiracy to commit any of the offenses listed herein;

(i) burglary

(j) escape from jail, prison or custody;

(k) false or bogus checks;

(l) pornography;

(m) any attempt to commit any of the above offenses; or

(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

(a) the conduct involved;

(b) the potential or actual injury caused by the applicant's conduct; and

(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a.

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

R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(1), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses the applicant has a criminal history, the Division shall evaluate the criminal history in accordance with Sections 58-55-302 and R156-5d-302f to determine appropriate licensure action.

R156-55d-306. Change of Qualifying Agent.

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of an identification as required under Subsection R156-55d-302a(1).

R156-55d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(2) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

(3) failing as an alarm agent to carry or display a copy of his National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

(4) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(5) failing to comply with operating standards established by rule;

(6) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(7) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to the need for an alarm system, the benefits of the alarm system, the installation of the alarm system or the response to the alarm system by law enforcement agencies; and

(8) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

R156-55d-602. Operating Standards - Alarm Equipment.

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding

minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

R156-55d-603. Operating Standards - Alarm Installer.

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA level one certification or equivalent training with him at all times.

R156-55d-604. Operating Standards - Alarm System User Training.

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm business or company, the installing alarm agent shall review with the alarm user, or in the case of a company, its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm business or company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm business or company for at least three years from the date of the training.

KEY: licensing, alarm company, burglar alarms

November 24, 2008	**58-55-101**
Notice of Continuation February 25, 2010	**58-1-106(1)(a)**
	58-1-202(1)(a)
	58-55-302(3)(k)
	58-55-302(3)(l)
	58-55-302(4)
	58-55-308

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 calculated using accepted pregnancy dating criteria such as menstrual or ultrasound dating, to determine an estimated date of delivery which equals 40 weeks 0 days gestation and is noted as 40.0.

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 14.0 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 14.0 weeks gestation;

(b) failure to deliver by 42.0 weeks gestation;

(c) a fetus in the breech position after 36.0 weeks gestation;

(d) any sign or symptom of:

(i) placenta previa;

(ii) deep vein thrombosis or pulmonary embolus; or

(iii) vaginal bleeding after 20.0 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 140 mm or a diastolic pressure greater than 90 mm 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 34.0 weeks gestation;

(vii) history of severe postpartum bleeding;

(viii) primary genital herpes outbreak;

(ix) increase in blood pressure with a systolic pressure greater than 140 mm or a diastolic pressure greater than 90 mm 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 160 mm or a diastolic pressure greater than 110 mm in two readings at least six hours apart, or 3+ to 4+ proteinurea, or greater than 5 gms of protein in a 24 hour urine collection; or
(B) a systolic pressure greater than 140 mm or a diastolic pressure greater than 90 mm 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 27.0 weeks 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 43.0 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 35.0 weeks gestation or prior to commencement of care if the care is sought after 35.0 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 42.0 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 20.0 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 37.0 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, hemorrhage 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) The 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

February 8, 2010 **58-1-106(1)(a)**
58-1-202(1)(a)
58-77-202(4)
58-77-601(2)

R156. Commerce, Occupational and Professional Licensing.
R156-79. Hunting Guides and Outfitters Licensing Act Rule.
R156-79-101. Title.

This rule is known as the "Hunting Guides and Outfitters Licensing Act Rule".

R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:

(a) the American Red Cross;

(b) the American Heart Association; or

(c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board, to denote the individual whose name and signature appear on the certificate has successfully completed the applicable first aid and CPR course.

(3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-103. 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 79.

R156-79-104. Organization - Relationship to Rule R156-1.

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

R156-79-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) and Section 58-79-302, the application requirements for licensure are defined herein.

(1) An application for licensure as a hunting guide shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed as a hunting guide; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

(2) An application for licensure as an outfitter shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

R156-79-302b. Qualifications for Licensure - Education Requirements.

(1) For the purposes of this rule, to show an applicant has successfully completed the basic education, any hunting guide or outfitter applicant shall provide the following:

(a) documentation of having obtained a high school diploma or its equivalent or a higher education degree; and

(b) documentation showing the completion of a first aid and CPR course.

R156-79-302c. Qualifications for Licensure - Examination Requirements.

(1) For the purposes of this rule, to show an applicant possesses a minimum degree of skill and ability, the applicant shall meet one of the following requirements:

(a) an applicant as a hunting guide shall pass the Utah Hunting Guide Examination or the Utah Outfitters Examination with a passing score of at least 75%; or

(b) an applicant as an outfitter shall pass the Utah Outfitters Examination with a passing score of at least 75%.

(2) An individual who fails an examination may retake the failed examination as follows:

(a) no sooner then 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

(3) The examination shall include an assessment of the applicant's knowledge of the Division hunting guide and outfitter statute and rules, the Utah Division of Wildlife Resources statutes and rules, the United States Forest Service and the Federal Bureau of Land Management hunting guidelines and rules and the Utah Hunter Safety Course guidelines and rules.

R156-79-302d. Qualifications for Licensure - Good Moral Character.

(1) Any one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:

(a) a violation of a state or federal wildlife, hunting guide

or outfitter statute or regulation that includes:

(i) an imprisonment for more than five days within the previous five years;

(ii) an unsuspended fine of more than $2,000 imposed in the previous 12 months;

(iii) an unsuspended fine of more than $3,000 imposed in the previous 36 months; or

(iv) an unsuspended fine of more than $5,000 imposed in the previous 60 months;

(b) any felony conviction within the last five years;

(c) a conviction for a felony offense against a person under Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;

(d) a conviction for one or more misdemeanors involving wildlife violations;

(e) a conviction for a misdemeanor crime of moral turpitude;

(f) a suspension or disciplinary action involving an individual obtaining or exercising the privileges granted by a hunting guide or outfitter license in this state or another state of the United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and

(g) a loss of the privilege to hunt in this state or another state of the United States or province of Canada.

R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.

(1) For the purposes of this rule, to show an applicant meets the training requirements as a hunting guide, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic hunting guide training program pursuant to Section R156-79-601; or

(b) documentation of 100 days of on-the job training that is substantially equivalent to the basic hunting guide training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2) To show an applicant meets the training requirements as an outfitter, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic outfitter training program pursuant to Section R156-79-602; or

(b) documentation of 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) The documentation required in Subsections (1)(b) and (2)(b) shall include:

(a) an affidavit by either a hunting guide or outfitter attesting to the on-the-job training as a hunting guide or an outfitter claimed by the applicant;

(b) self-authenticating guarantees of reliability include, but are not limited to:

(i) federal land agency records;

(ii) approved training program records; or

(iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school approved by the Division in collaboration with the Board.

R156-79-303. 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 79 is established by rule in Section R156-1-308a.

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

R156-79-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising or soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing or hindering or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to promptly report, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a violation of a state or federal wildlife, game or guiding statute that the licensee believes was committed by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food, drink and subjecting any animal used in the conduct of business to needless abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at all times to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in all other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect all food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality to the client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state and federal wildlife laws and rules;

(14) failing to adequately maintain general liability insurance coverage as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, at all times when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;

(2) horsemanship;

(3) packing skills;

(4) transporting livestock;

(5) shoeing skills;

(6) use of a crosscut saw and ax;

(7) use of a chain saw;

(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) hunting guide regulations;
(13) first aid and CPR training provided by:
(a) the American Red Cross;
(b) the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
(14) orienteering and map reading;
(15) a basic off highway vehicle safety course;
(16) basic survival skills;
(17) trophy judging skills;
(18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:
(1) hunter ethics and attitude;
(2) horsemanship;
(3) packing skills;
(4) transporting livestock;
(5) shoeing skills;
(6) use of a crosscut saw and ax;
(7) use of a chain saw;
(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) outfitter regulations;
(13) first aid and CPR training provided by:
(a) the American Red Cross;
(b) the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
(14) a basic off highway vehicle safety course;
(15) supervising clientele;
(16) hiring and supervising personnel;
(17) outfitter advertising;
(18) booking clientele;
(19) going into business for oneself;
(20) wilderness and back country manners;
(21) applying federal and state land use policies;
(22) obtaining all necessary licenses and permits and permissions for the client;
(23) providing staff and facilities for hunting;
(24) providing a hunting guide;
(25) orienteering and map reading;
(26) basic survival skills;
(27) trophy judging skills;
(28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters
February 8, 2010 **58-79-101**
58-1-106(1)(a)
58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-106. Professional Conduct.
R162-106-1. Uniform Standards.

(1) Unless exempted in Subsection 2, all appraisers and appraiser trainees must comply with the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP). All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP.

(2) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(a) a Division staff member or employee;

(b) a member of the experience review committee as appointed and approved by the Board;

(c) a member of the technical review panel as appointed and approved by the Board;

(d) a hearing officer;

(e) a member of a county board of equalization;

(f) an administrative law judge;

(g) a member of the Utah State Tax Commission; or

(h) a member of the Board.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser,"and State- Licensed Appraiser shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number or license number must follow his name.

R162-106-3. Signatures and Use of Seal.

106.3.1. State-Licensed Appraisers. State- Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.2. Signatures.

106.3.2.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.2.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.2.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

106.3.2.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-4. Testimony by an Appraiser.

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

R162-106-5. Failure to Respond to Notice.

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, or when the Division notifies an appraiser or registered expert witness that information is needed from the individual, the notified individual must respond to the notice in the manner specified in the notice within ten business days of receipt of the notice from the Division. Failure to respond within the required time period to a notice or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

R162-106-6. Recordkeeping Requirements.

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

R162-106-7. Sales and Listing History.

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze and report the listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

R162-106-8. Draft Reports.

For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.

106.8.2. An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.

R162-106-9. Inspections.

All appraisal reports shall include a statement indicating whether or not the subject property was inspected as part of the appraisal process, and if any inspections were done, the following information concerning the inspections shall also be included:

(a) the names of all appraisers and appraisal trainees who participated in each property inspection;

(b) whether each inspection was an exterior inspection only or both an exterior and an interior inspection; and

(c) the date that each inspection was performed.

KEY: real estate appraisals, conduct
February 3, 2010 61-2b-29
Notice of Continuation February 15, 2007 61-2b-8(5)©

R164. Commerce, Securities.
R164-2. Investment Adviser - Unlawful Acts.
R164-2-1. Investment Adviser Performance-Based Compensation Contracts.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets the requirements whereby an investment adviser may receive performance-based compensation for investment advisory services rendered.

(B) Definitions

(1) "Affiliate" has the same definition as in Section 2(a)(3) of the Investment Company Act of 1940, which is adopted and incorporated by reference and available from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

(4) "Interested person" means:

(4)(a) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(4)(b) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(4)(b)(i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser, or

(4)(b)(ii) 5% of the total assets of the person seeking to act as the client's independent agent; or,

(4)(c) any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Performance-based contract exemption

(1) Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs (D) through (H) of this rule are met.

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least $750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(E) Compensation formula

(1) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1)(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999) which is adopted and incorporated by reference and available from the Division, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(1)(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must include:

(1)(b)(i) the realized capital losses of securities over the period, and

(1)(b)(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and,

(1)(c) the formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed in accordance with subparagraphs (a) and (b) of this subparagraph (E), in the client's account for a period of not less than one year.

(F) Additional disclosure requirements

(1) Before entering into the advisory contract and in addition to the requirements of SEC Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(1)(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(1)(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(1)(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(1)(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser

believes that the index is appropriate; and,

(1)(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 how the securities will be valued and the extent to which the valuation will be independently determined.

(G) Arms length agreement

(1) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subparagraph (B)(3) of this rule, the person representing the company, understands the proposed method of compensation and its risks.

(2) The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(H) Unlawful acts

(1) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Subsection 61-1-2(1) or any other applicable provision of the Utah Uniform Securities Act or any rule or order thereunder.

KEY: securities, securities regulation
March 20, 2000 61-1-2
Notice of Continuation February 16, 2010 61-1-24

R164. Commerce, Securities.
R164-9. Registration by Coordination.
R164-9-1. Registration by Coordination.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering may be registered by coordination under Section 61-1-9.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) Offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994).

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933 or SEC Regulation A;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the 20 working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

R164-9-2. MJDS - Financial Statement Requirement.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9 and 61-1-24.

(2) This rule clarifies that financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, will be permitted in registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under MJDS.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Canadian generally accepted accounting principles

(1) Financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement filed with the Division under Section 61-1-9 and with the SEC under MJDS

on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC, and:

(1)(a) The securities which are the subject of a registration statement filed with the Division on SEC Form F-7 are offered for cash upon the exercise of rights granted to existing security holders.

(1)(b) The securities which are the subject of a registration statement filed with the Division on SEC Form F-8 are securities to be issued in an exchange offer, merger or other business combination.

(1)(c) The securities which are the subject of the registration statement filed with the Division on SEC Form F-9 are either non-convertible preferred stock or non-convertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(1)(d) The securities which are the subject of a registration statement filed with the Division on Form F-10 are offered and sold pursuant to a prospectus in which the SEC has not required reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(D) Preferred stock and certain debt securities

(1) For purposes of this rule, preferred stock and debt securities which are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of Subparagraph (C)(1)(c).

R164-9-3b. MJDS - Review Period.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-9(6) and Section 61-1-24.

(2) This rule provides a shorter review period for registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under its multijurisdictional disclosure system.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Review period

(1) The 20 working day disclosure statement filing requirement set forth in Subsection 61-1-9(3)(b) shall be reduced to seven working days for a registration statement filed with the Division and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC.

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February 2, 2010 **61-1-9**
Notice of Continuation July 30, 2007 **61-1-11**
61-1-24

R164. Commerce, Securities.
R164-10. Registration by Qualification.
R164-10-2. Registration Statements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-10, 61-1-11, and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by qualification in Utah. It is available for registration of securities by any person who proposes to issue or sell any security.

(3) This rule requires that the registration statement must contain certain information. The issuer, issuer-agent and broker-dealer should be aware that information not specifically required by this rule or by the Division prior to effectiveness may be necessary to be included so as to meet the disclosure requirements of Section 61-1-1. Review of the registration statement by the Division does not imply that the disclosure requirements of Section 61-1-1 have been met.

(4) Section 61-1-12 enables the Director of the Division to deny effectiveness to, or revoke or suspend effectiveness of, any securities registration statement, and to impose a fine. Applicant should be aware that criteria contained in Section 61-1-12 will be applied in addition to the requirements of this rule.

(5) This rule requires that certain actions be taken by the issuer after the effective date of the registration statement. See paragraph (C) of this rule. Effectiveness of the registration statement may be suspended or revoked, and a fine imposed, for failure to comply with these requirements.

(6) Section 61-1-16 prohibits the filing of false or misleading documents with the Division. Documents and information filed with the Division should be closely scrutinized prior to signing and filing to insure their accuracy.

(7) Any security may be registered by qualification.

(8) Qualifying companies may utilize NASAA Form U-7 to satisfy the prospectus information requirements set forth in subparagraphs (E)(1) and (E)(2) this rule.

(B) Definitions used in this rule

(1) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(1)(a) planned principal operations have not commenced; or

(1)(b) planned principal operations have commenced, but there has been no significant revenue therefrom.

(2) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Expert" means any person referred to in Subsection 61-1-10(2)(o), whose opinion, appraisal, report, name or similar information, is used in the registration statement or provides information which is used in the registration statement.

(5) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity or partners' capital, and appropriate notes to the financial statements.

(6) "NASAA" means the North American Securities Administrators Association, Inc.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Registration requirements

(1) The issuer must file with the Division the documents and information required by paragraphs (C) and (D) of this rule, and pay a fee as specified in the Division's fee schedule.

(2) The registration statement must

(2)(a) contain the documents required by paragraph (D) of this rule,

(2)(b) comply with the merit requirements of paragraph (G) of this rule,

(2)(c) comply with the requirements of Section R164-11-1,

(2)(d) comply with the fund impound requirements of Section R164-11-7b, and

(2)(e) comply with the sales commission requirements of Section R164-12-1f.

(3) Within ten working days after the effective date of the registration statement, issuer must file with the Division two copies of the final prospectus.

(4) Within ten working days after the expiration of the effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a completed and executed closing report on Division Form 10-2-1A.

(5) Within ten working days after the expiration of effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a list of persons who have purchased or subscribed to the offering, including the residential address of each purchaser, the dates of and amount of securities purchased or subscribed to, and the consideration paid by each purchaser or subscriber.

(6) Subsequent to the filing date of the registration statement, issuer must file with the Division financial statements which meet the requirements of paragraph (H) of this rule.

(7) Where the Division has notified issuer in writing of any missing or incomplete documents, deficiencies in the registration statement, or changes required in the prospectus, issuer must respond promptly. If issuer does not respond to the Division's deficiency letter within 30 calendar days of the mailing date of its deficiency letter, the registration statement may be deemed incomplete and appropriate action may be taken to deny effectiveness to the registration statement, and to impose a fine.

(D) Documents to be filed with the Division

The registration statement must contain the following:

(1) One original Division Form 10-2-1 which has been manually executed by all officers, directors, or partners;

(2) One original Division Form 10-2-1B certification for each officer, director, promoter, holder of 10% of the outstanding stock, broker-dealer or issuer-agent, and attorney;

(3) One original NASAA Form U-2, Uniform Consent to Service of Process, which is available from NASAA or the Division, appointing the Director, Utah Division of Securities as issuer's agent for service;

(4) Two copies of the preliminary prospectus containing the information required by paragraph (E) of this rule;

(5) Two copies of financial statements conforming to the requirements of paragraph (F) of this rule;

(6) One original opinion of counsel as required by Subsection 61-1-10(2)(n);

(7) One original NASAA Form U-2A, Uniform Corporate Resolution, which is available from NASAA or the Division, of the issuer where the registration statement is filed by or on behalf of a person other than an individual;

(8) One copy of the organizational documents as required by paragraph (I) of this rule;

(9) One copy of the subscription agreement, if any, to be used in connection with the offering;

(10) One original specimen security as required by paragraph (J) of this rule;

(11) One copy of the executed selling documents as required by paragraph (K) of this rule;

(12) One original of completed and executed documents required by Section R164-11-7b;

(13) One copy of any order, judgment or decree described

in subparagraph (E)(2)(d)(ix) of this rule;

(14) At the time of filing the registration statement or not less than five days prior to use, one copy of any item, other than the prospectus, intended to be used to advertise or solicit interest in the offering; except no filing shall be required for notices and advertisements used after the effective date of a registration statement which contains only statements allowed by SEC Rule 134, Communications Not Deemed a Prospectus, 17 CFR 230.134, 1993, which is adopted and incorporated by reference and available from the SEC or the Division;

(15) Original written consents as required by paragraph (L) of this rule;

(16) One copy of each material contract or agreement with an affiliate of the issuer and one copy of any other material contract;

(17) One original of documents supporting the value of assets as shown on the financial statements such as appraisals, assays, reserve reports, engineer reports and similar expert evaluations as discussed in the prospectus; and

(18) Other material documents or information as requested by the Division. The provisions of subparagraph (C)(7) of this rule apply to such requests.

(E) Prospectus information requirements

The prospectus must contain at least the following information:

(1) Facing pages

(1)(a) Title of document;

(1)(b) Number and class of shares or units offered;

(1)(c) Par or stated value;

(1)(d) Entity description, including:

(1)(d)(i) name,

(1)(d)(ii) address,

(1)(d)(iii) type,

(1)(d)(iv) state and date of incorporation or organization;

(1)(e) Statement as to whether or not a public market exists or will exist;

(1)(f) Statement as to how the securities are registered or exempt at both the federal and state level;

(1)(g) Statement that registration with the Division is neither a recommendation or endorsement of any security, individual, firm or corporation;

(1)(h) Statement as to whom offering is made;

(1)(i) In chart form, including:

(1)(i)(i) shares or units offered,

(1)(i)(ii) price per share,

(1)(i)(iii) commissions,

(1)(i)(iv) net proceeds to the issuer, and

(1)(i)(v) minimums and maximums sought;

(1)(j) Footnotes including:

(1)(j)(i) consideration sought,

(1)(j)(ii) manner of offering,

(1)(j)(iii) amount and type of sales commissions to be paid, and

(1)(j)(iv) the maximum amount of offering expenses;

(1)(k) Broker-dealer or agent name, address, and telephone number;

(1)(l) Statement that no person is authorized to make any statements not contained in the disclosure document and that practices to the contrary may be a criminal offense;

(1)(m) Effective date of the prospectus.

(2) Subsequent pages

(2)(a) The issuer:

(2)(a)(i) history,

(2)(a)(ii) purpose,

(2)(a)(iii) intentions,

(2)(a)(iv) predecessors;

(2)(b) Risk factors;

(2)(c) Conflicts of interest;

(2)(d) With respect to every director and officer of the issuer, the following information:

(2)(d)(i) Name, age, residential address;

(2)(d)(ii) Occupation and business experience during the past five years;

(2)(d)(iii) The number of shares or partnership interests of the issuer owned as of a specified date within 30 days of the filing of the registration statement, the approximate date of purchase and the consideration paid for those shares or interests;

(2)(d)(iv) The amount of the securities covered by the registration statement to which an intention to subscribe has been indicated;

(2)(d)(v) Any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(2)(d)(vi) Any family relationship between any director or officer;

(2)(d)(vii) Any other director or officer or similar position held in any other non-public company;

(2)(d)(viii) Any previous involvement in a public company as an officer, director or promoter, including a complete description of the company and affiliation with the company, the dates of and amounts raised in public offerings of the company and, if the company has undergone a reorganization, merger or an acquisition of assets in which an amount of stock representing more than 50% of the company's outstanding stock was issued, the consideration per share received by the company and the book value per share of the company immediately before and after the reorganization, merger or acquisition of assets;

(2)(d)(ix) Involvement in any material legal proceeding;

(2)(d)(x) Any remuneration paid directly or indirectly by the issuer, its predecessors, parents, or subsidiaries, during the past twelve months and estimated to be paid during the succeeding twelve months;

(2)(e) With respect to any person owning of record, or beneficially, 10% of the outstanding shares of any class of equity security of the issuer, the same information specified in subparagraphs (E)(2)(d)(i) and (iii)-(x) of this rule.

(2)(f) With respect to every promoter, if the issuer was organized within the past three years, the same information as specified in subparagraph (E)(2)(d) of this rule and any amount paid by the issuer within the past three years as well as the consideration given for such payments.

(2)(g) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution the following information:

(2)(g)(i) The information required in subparagraph (E)(2)(d)(i) of this rule;

(2)(g)(ii) The amount of securities of the issuer held as of the date the registration statement was filed with the Division;

(2)(g)(iii) The information required in subparagraph (E)(2)(d)(v) of this rule;

(2)(g)(iv) Statement of reasons for making the offering.

(2)(h) Dilution, share ownership and capital contributions: narrative discussion and graphic or tabular illustration, such as bar graphs or pie charts;

(2)(i) Fund impound:

(2)(i)(i) amount,

(2)(i)(ii) duration,

(2)(i)(iii) location, and

(2)(i)(iv) statement that funds will be released only upon order of the Division;

(2)(j) Material litigation which affects the offering;

(2)(k) Summary of the Opinion of Counsel required by Subsection 61-1-10(2)(n);

(2)(l) The substance of reports, findings, appraisals and valuations provided by persons who are named as having prepared or certified such reports or valuations pursuant to Subsection 61-1-10(2)(o);

(2)(m) With respect to Limited Partnerships, net worth of each individual general partner exclusive of home, automobile and home furnishings or, in the alternative, a representation that the general partner meets the net worth requirements of subparagraph (G)(3)(b)(iii) of this rule;

(2)(n) Definition section, where material;

(2)(o) Substance of material contracts and agreements;

(2)(p) The amount of shares subject to transferability restrictions, contractual or otherwise, and the nature of said restriction;

(2)(q) Statement as to the issuer's fiscal year-end date;

(2)(r) Financial statements as required by this rule;

(2)(s) Statement of the intended use of proceeds of the offering as required by Subsection 61-1-10(2)(i);

(2)(t) Transfer agent's name and street address;

(2)(u) Statement that any and all amendments to the prospectus will be promptly filed with the Division, distributed to purchasers in the offering, and made a part of any prospectus used thereafter;

(2)(v) Statement that the Division, market makers, and security holders will be promptly notified in writing of any change in the management, purpose, and control of the issuer, or any material or adverse condition affecting the issuer.

(3) Small Company Offering Registration (SCOR)

(3)(a) A company issuing securities exempt from federal registration under Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933, may utilize the NASAA Form U-7, which is available from NASAA or the Division, as the prospectus for the offering to satisfy subparagraph (D)(4) of this rule, provided that the issuer:

(3)(a)(i) complies with each of the requirements set forth in Part I(1) of the NASAA SCOR Issuer's Manual;

(3)(a)(ii) complies with all conditions set forth in, and provides all information required by Part I(2) of the NASAA SCOR Issuer's Manual; and,

(3)(a)(iii) in all material respects complies with all other requirements of this rule.

(3)(b) The filing of one original NASAA Form U-1, Uniform Application to Register Securities, which has been manually executed by all officers and directors of the issuer, satisfies subparagraph (D)(1).

(F) Financial statements

The financial statements contained in the registration statement and the prospectus must meet the requirements of this paragraph (F).

(1) Financial statements of the issuer, or the issuer and its predecessors or any business to which the issuer is a successor, which are to be filed as part of the registration statement must be prepared in accordance with generally accepted accounting principles (GAAP).

(2) Audited financial statements required herein must be accompanied by an unqualified opinion report by an independent certified public accountant.

(3) Consolidated financial statements must be prepared for an issuer that has majority-owned subsidiaries.

(4) The Division may permit the omission of one or more of the financial statements required under this rule and in substitution thereof permit appropriate comparable financial statements, upon the written request of issuer and where consistent with the protection of Utah investors.

(5) The Division may require the filing of other financial statements in addition to or in substitution for the financial statements herein required where such financial statements are necessary or appropriate for an adequate presentation of the issuer's financial condition or the financial condition of any person considered necessary, where consistent with the protection of Utah investors.

(6) Issuer must file audited financial statements for the most recent fiscal year, or as of a date within four months of the date the registration statement is filed with the Division if the issuer, including predecessors, has existed for a period of less than one fiscal year.

(7) When the filing date of the registration statement falls after a date four months subsequent to the issuer's most recent fiscal year end, unaudited interim financial statements dated within four months of the filing date must also be included in the registration statement.

(8) Unaudited financial statements must be filed for the two fiscal years preceding the most recent fiscal year or for such shorter period as the issuer and any predecessors have been in existence if less than three years.

(9) If the financial statements required herein are as of a date more than four months prior to the date that the registration statement is expected to become effective, the financial statements must be updated as of a date within four months of the expected effective date and include the entire period since the last fiscal year end. Such interim financial statements need not be audited.

(10) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements shall be required of that business as if it were the issuer.

(11) An issuer which is a limited partnership shall also be required to file the balance sheets of the general partners as described below.

(11)(a) Where a general partner of the limited partnership is a corporation there must be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year.

(11)(b) Where a general partner of the limited partnership is a partnership there must be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(11)(c) Where a general partner of the limited partnership is a natural person there must be filed, only as supplemental information, an unaudited balance sheet of such natural person as of a date no more than four months prior to the date the registration statement was filed.

(G) Merit requirements

(1) Minimum offering amount for a development stage company

(1)(a) The minimum offering amount for a development stage company shall not be less than an amount such that immediately following the close of the offering the net tangible asset value of the company is equal to or greater than $75,000, based on the net tangible asset value of the most recent balance sheet included in the prospectus as adjusted to give effect to the minimum net proceeds of the offering and, at the discretion of the Division, any value not recognized for financial statement purposes as supported by independent appraisal or other recognized authority.

(2) Dilution

(2)(a) The maximum dilution to the net tangible asset value of the securities offered in a public offering pursuant to Section 61-1-10 shall not exceed 33 1/3% of the public offering price for a development stage company or 50% for all other companies.

(2)(b) This subparagraph (G)(2) of this rule shall apply to all offerings of preferred or common corporate stock.

(2)(c) Dilution shall be equal to the difference between the offering price of the shares and the net tangible asset value per share based on the most recent balance sheet included in the prospectus as adjusted to give effect to the maximum net proceeds of the offering. The net tangible asset value of the shares at the close of the offering shall be determined by dividing the net tangible asset value of the corporation by the total number of shares outstanding at the close of the offering. The net tangible asset value of the corporation shall be equal to

the total assets of the corporation less the intangible assets and the liabilities of the corporation.

(2)(d) In the event that not all shares offered are sold, the shareholders, other than those purchasing in the offering, shall be required to contribute to the company a sufficient number of shares or tangible assets so that dilution, based on the most recent balance sheet included in the prospectus and receipt of the net proceeds from the shares actually sold, does not exceed the maximum dilution allowed.

(2)(e) Registration will not be permitted to close, and will not be issued a closing letter, where the dilution at the close of the offering is greater than the maximum dilution allowed and such violation has not been remedied.

(3) Equity

(3)(a) Corporate Equity and Debt Offering.

(3)(a)(i) Prior to and during the effectiveness of a registration statement pertaining to an offering of securities which are corporate equity securities, rights to obtain corporate equity securities, securities convertible into corporate equity securities, or corporate debt securities, the corporation must have equity equal to at least 10% of the maximum aggregate offering price of the securities which are registered or to be registered. Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash, and retained earnings. Retained deficits will not reduce the equity of the corporation for purposes of this subparagraph (G)(3)(a) of this rule. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph (G)(3)(a) of this rule.

(3)(a)(ii) Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the issuer, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(3)(b) Limited Partnership and Trust Certificate Offering. Prior to the effectiveness of a registration statement relating to limited partnership units, issuer must meet one of the following requirements:

(3)(b)(i) The general partner, promoter, or manager has paid, in cash, at least an amount equal to 5% of the maximum aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer;

(3)(b)(ii) The general partner, promoter, or manager has the ability to pay and commit themselves to pay, in cash, 5% of the maximum aggregate offering price of the securities to be registered into the fund impound prior to the release of the impound and in addition to any other impound which may be required by the rules of the Division; or,

(3)(b)(iii) The general partner, promoter, or manager has an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to 10% of the maximum aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

(4) Offering Expenses

The maximum offering expenses, not including commissions on the sales of the securities, which shall be paid from the proceeds of the public offering or by the issuer in connection with the public offering is the greater of $6,000 or 8% of the minimum aggregate offering price of the securities registered.

(H) Post filing financial statement requirements

(1) The financial statements required by this paragraph (H) of this rule must be prepared in accordance with the requirements set forth in paragraph (F) of this rule.

(2) Subsequent to the filing date of a registration statement, the following financial statements must be filed:

(2)(a) After the end of each fiscal year, through and including the year in which 80% of the offering proceeds will have been used, audited financial statements for the previous fiscal year must be filed with the Division within 90 days after the end of the applicant fiscal year.

(2)(b) If an effective registered offering has not been completely sold at a date six months after the end of the issuer's last fiscal year, unaudited interim financial statements must be filed with the Division within 30 days of that date for the period ending six months from the fiscal year end. Financial statements required by this subparagraph (H)(2) of this rule shall not be required where interim financial statements are filed pursuant to the requirements in paragraph (F) of this rule which cover at least the same period covered by this subparagraph (H)(2).

(3) If an effective registered offering has not been completely sold, the financial statements required by this paragraph (H) of this rule must be appended to every prospectus used thereafter.

(I) Organizational documents

(1) Corporation. A registration statement for the proposed sale of securities of a corporation must contain:

(1)(a) one copy of the certificate and articles of incorporation and all amendments thereto; and

(1)(b) By-laws.

(2) Limited Partnership. A registration statement for the proposed sale of securities of a limited partnership must contain:

(2)(a) one copy of the limited partnership agreement, and

(2)(b) the documentation of the managing general partner which would be required by this paragraph (I) of this rule if the managing general partner was the issuer of the securities.

(3) Others. As the Division specifies in each instance.

(J) Specimen Security

The registration statement must contain either:

(1) An original specimen security which conforms to the description of the security in the registration statement; or

(2)(a) A letter, signed by a director of the issuer, or a person of similar responsibility for an unincorporated issuer, stating that a specimen security meeting the requirements of subparagraph (J)(1) of this rule will be delivered prior to the release of impounded funds, and

(2)(b) A notation on Item 12 of Division Form 11-7B that it shall be a condition of release of such impounded funds for the issuer to provide a specimen security meeting the requirements of subparagraph (J)(1) of this rule.

(K) Selling documents

The registration statement must contain the following documents with respect to the persons who propose to offer or sell the securities pursuant to the registration statement:

(1) Where the securities are to be offered through a licensed agent or broker-dealer, one copy of the signed agreement between the agent OR broker-dealer and the issuer setting forth the compensation each person will receive in connection with such distribution, and a description of any transactions between such person and the issuer within the twelve months preceding the filing of the registration statement.

(2) Where the securities are to be offered through any person not licensed with the Division as a broker-dealer or agent, the broker-dealer or agent application and supporting documents and information, as required in Section R164-4-1, for such person must accompany the registration statement at the time of the original filing.

(3) No registration statement shall become effective where

(3)(a) the only person participating in the distribution is a broker-dealer which is a member of FINRA, and

(3)(b) the Division has not received written confirmation or oral confirmation to be followed by written confirmation that FINRA has no objection to the compensation arrangements set forth in the registration statement.

(4) No registration statement shall be effective or become effective without complete compliance with Section R164-4-1 by at least one person participating in the distribution.

(L) Consent of expert

(1) Where any information provided by an expert is used in the registration statement or prospectus, the registration statement must include the consent of the expert to the specific use of the information in the prospectus or registration statement.

(2) Where the name of an expert is used in the registration statement or prospectus, the registration statement or prospectus must contain the consent of the expert as to the specific use of the expert's name.

(M) Amendments

(1) Whenever there is a material change in any information or document filed with the Division, the issuer must file a correcting amendment with the Division within ten working days after the material change.

(2) There is no charge for filing a correcting amendment.

KEY: financial statements, securities, securities regulation
February 2, 2010 61-1-10
Notice of Continuation July 30, 2007 61-1-24

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-1. General Registration Provisions.

A. Preliminary Notes

(1) This R164-11-1 applies to public offerings registered by coordination or qualification pursuant to Sections 9 or 10 of the Utah Uniform Securities Act (the "Act"), except this rule shall not apply to offerings which are registered in twenty or more states, including the state of Utah.

(2) The purpose of the rule is to ensure full disclosure of material information, prohibit offerings which tend to work a fraud on purchasers and prohibit unreasonable amounts of promoters' profits.

(3) Failure to comply with the provisions of this rule shall be grounds for denial, suspension or revocation of the effectiveness of a registration statement.

(4) For purposes of this rule "development stage companies" shall mean those companies that devote substantially all of their efforts to acquiring or establishing a new business and in which either: 1) planned principal operations have not commenced or 2) there have been no significant revenues therefrom.

(5) Selected requirements of this rule may be waived by the Utah Securities Division ("Division") where an applicant makes a specific request for a waiver and the Division finds that such requirement(s) is/are not necessary or appropriate for the protection of investors.

(6) This rule applies to all registration statements filed on or after February 15, 1986.

B. NASAA Statements of Policy

All registration statements for oil and gas programs, church bonds, real estate investment trusts, publicly-offered cattle-feeding programs, real estate programs and equipment programs must satisfy the provisions of the appropriate statements of policy adopted by the North American Securities Administrators Association ("NASAA").

Offerings which are required under this paragraph B to satisfy, and do satisfy, the provisions of a NASAA statement of policy shall not be required to satisfy the provisions of paragraphs C and D of this R164-11-1.

C. Promoters' Investment in Development Stage Companies

An investment by promoters and shareholders in a development stage company shall be required as follows:

(1) Corporate Equity and Debt Offerings.

Prior to and during the effectiveness of a registration statement, where the registrant is the issuer, pertaining to an offering of securities which are corporate equity securities, which are securities convertible into corporate equity securities or which are corporate debt securities, the corporation shall have equity equal to at least the lesser of: 1) ten percent (10%) of the aggregate offering price of the securities which are registered or to be registered or 2) fifty thousand dollars ($50,000). Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash and retained earnings. Retained deficits will not reduce the equity of the company for purposes of this subparagraph. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph.

NOTE: Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the registrant, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(2) Partnership and Trust Certificate Offerings.

Prior to the effectiveness of a registration statement relating to partnership units, the registrant shall meet one of the following requirements:

(a) The general partner(s), promoter(s), and/or manager(s) have paid, in cash, at least an amount equal to five percent (5%) of the aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer; or

(b) The general partner(s), promoter(s), and/or manager(s) have the ability to pay and commit themselves to pay, in cash, the lesser of: 1) five percent (5%) of the aggregate offering price of the securities to be registered or 2) fifty thousand dollars ($50,000); or

(c) The general partner(s), promoter(s), and/or manager(s) have an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to ten percent (10%) of the aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

D. Business Plan and Use of Proceeds for Development State Companies

In a development stage company the business plan and the use of offering proceeds must be disclosed with specificity in the offering prospectus.

Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated for the purchase, construction or development of identified properties or products, discharge of indebtedness, payment of overhead, etc., the registrant shall comply with the following provisions:

(1) Eighty percent (80%) of the net offering proceeds shall be escrowed in a manner approved by the Division. The escrow shall continue until the registrant can specifically allocate the use of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material information concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be given no less than twenty (20) days to ratify or rescind his/her investments. Investors who choose to rescind his/her investments shall receive a pro rata refund of all offering proceeds. However, should enough investors request a refund such that the net tangible asset value of the company after the refund would be less than seventy-five thousand dollars ($75,000) the registrant shall make a pro rata refund of all unused offering proceeds to investors.

(3) The registrant shall not issue stock, deliver stock certificates or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

E. Employment of Agents by Issuers

An issuer shall not employ agents to sell securities which are the subject of the registration statement until: 1) such agent is registered with the Division as an agent of the issuer; and 2) the issuer has filed with the Division a surety bond in the amount of twenty-five thousand dollars ($25,000) conditioned on the agents compliance with the Utah Uniform Securities Act and the rules of the Securities Division of the Utah Department of Commerce and covering the effective period of the issuer's registration statement.

R164-11-2. Hearings for Certain Exchanges of Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-11.1 and 61-1-24.

(2) This rule sets forth the procedure and requirements to

be met when seeking a fairness hearing for certain exchanges of securities.

(3) A finding of fairness under Section 61-1-11.1 does not constitute a registration or exemption except as provided by Paragraph (H).

(B) Definitions.

(1) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Interested person" means any officer, director or security holder of either party involved in the transaction, or any other person as the Division may permit.

(C) Parties.

The Division will only consider an application under Section 61-1-11.1 for a transaction where:

(1) Either party to the transaction is a domestic business entity formed, organized or incorporated under the laws of Utah;

(2) Either party to the transaction is a business entity whose headquarters or principal place of business is located in Utah; or

(3) Thirty percent (30 %) or more of the persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1) are persons who are Utah residents.

(D) Application Requirements.

An application may be made to the Division under Subsections 61-1-11.1(1) and 61-1-11.1(5) by filing with the Division:

(1) Division Form 11--Application for Hearing for Certain Exchanges of Securities;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) A fee as specified in the Division's fee schedule; and

(4) Other documents as the Division may request.

(E) Notice.

(1) At least twenty (20) calendar days prior to the hearing, the applicant must provide written notice of the hearing, as approved by the Division, to any person to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1). Such notice shall be effective pursuant to Subsection 16-10a-103(5). Such notice period may be waived upon the demonstration of good cause by the applicant.

(2) The notice must contain the following information:

(a) A brief statement of the facts that give rise to the hearing, including an outline of the terms and conditions of the proposed transaction;

(b) A statement of the issues to be considered at the hearing, together with the relevant statutes and rules;

(c) The time and place of the hearing as specified by the Division;

(d) The procedures for participating in the hearing by telephone or affidavit as approved by the Division; and

(E) Any other information requested by the Division.

(3) Prior to or at the hearing, the applicant must file an affidavit with the Division stating that a notice has been sent, in compliance with Subparagraphs (E)(1) and (E)(2), to all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1), including a description of how and when the notice was sent.

(F) Hearing.

(1) Within a reasonable time after the receipt of an application meeting the requirements of Section 61-1-11.1 and this rule, the Division may schedule a hearing to be conducted under Subsection 61-1-11.1(2).

(2) A hearing under Section 61-1-11.1 shall be conducted by a hearing officer designated by the Director.

(3) Any interested person may attend a hearing under Section 61-1-11.1.

(4) Any interested person may participate in the hearing by giving written notice to the Division at least two (2) days prior to the hearing, indicating such person's intention to appear and participate in the hearing. Interested persons may participate:

(a) In person;

(b) By telephone; or

(c) By affidavit.

(5) The hearing shall be recorded electronically and transcribed by the Division. The transcription costs will be assessed to the Applicant. Upon request, the Division will hire a court reporter at the requester's expense.

(G) Findings and Order.

Within a reasonable time after completion of the hearing, the Director shall issue an order pursuant to Subsection 61-1-11.1(3).

(H) Exemptions.

The Issuer may request that the Division determine that the transaction is exempt from registration under Subsection 61-1-14(2)(s).

R164-11-7b. Fund Impound.

A. Preliminary Notes

(1) R164-11-7b applies only to public offerings which are registered by qualification pursuant to Section 10 of the Utah Uniform Securities Act (the "Act") and the rules thereunder.

(2) This R164-11-7b and R164-10-2 both require certain documents to be filed and provide that failure to comply with these requirements is cause for denial, suspension or revocation of the effectiveness of a registration statement.

(3) This rule R164-11-7b is a statement of what has been the position of the Utah Securities Division (the "Division") in the past under Rule A67-03-12 and applies to all registration statements which become effective on or after May 10, 1983.

B. Term of Impound

(1) The applicant for registration by qualification under Section 10 of the Act and the rules thereunder may choose a term of not less than one month and not more than one year from the effective date of the registration statement.

(2) The term of the impound shall be expressed by the number of months and shall not be expressed by the number of days.

C. Amount to be Impounded

(1) The amount to be impounded shall be the greater of:

(a) Twenty-five percent of the aggregate offering price of the securities to be registered plus offering expenses; OR

(b) The minimum amount required to sustain the business proposed by the registrant for one full year from the release of the impound; OR

(c) The minimum amount proposed to be sold by the applicant pursuant to the registration statement.

D. Where Funds are to be Impounded

Funds may be impounded at any federal or state bank or savings institution.

E. Conditions of Impound

(1) The applicant shall file a completed FORM 11-7b with the Division as part of the registration statement.

(2) The conditions of impound are stated on FORM 11-7b and are herein incorporated as requirements of this R164-11-7b.

F. Release of Impounded Funds

(1) The impounded funds shall be released only by an ORDER OF THE DIVISION.

(2) The impounded funds shall be released to the registrant where:

(a) All registration requirements which, pursuant to the rules of the Division needed to be met by such date, have been met;

(b) The registrant requests the release in writing; and

(c) The Division receives written confirmation from the financial institution impounding the funds of the amount which has been deposited into the impound.

G. Certain Registrants

Where the registrant in a registration by qualification is a security holder who is not conducting a public offering for or on behalf of the issuer of the securities which are to be sold in the offering, no fund impound is required by this R164-11-7b; provided, however, that where an offering has a "minimum" required to be sold in order to consummate the transaction, a fund impound is required.

KEY: securities regulation
February 2, 2010 61-1-11(7)(b)
Notice of Continuation July 30, 2007

R164. Commerce, Securities.
R164-12. Sales Commission.
R164-12-1f. Commissions on Sales of Securities.

A. Preliminary Notes

(1) This R164-12-1f regulates the compensation which may be received by any person in connection with a public offering of securities pursuant to a registration by qualification under Section 10 of the Utah Uniform Securities Act (the "Act"). The Rule does not effect offerings which are registered by coordination or offerings which are sold pursuant to an exemption from the Act.

(2) This R164-12-1f does not effect the requirements of the Act and the rules thereunder as to registration, supervision and termination of agents.

(3) This R164-12-1f is an extended version of the standards that the Utah Securities Division (the "Division") has in the past required to be met. The standards herein are based upon reasonableness, the NASAA guidelines as to options and warrants issued to underwriters, and FINRA's interpretations of fair compensation. The percentage of cash commissions that is permitted under this R164-12-1f is unchanged from the former Rule A67-03-12.

B. Persons Subject to this Rule

(1) This R164-12-1f regulates compensation to participants in a distribution of securities which are registered by qualification pursuant to Section 10 of the Act and the rules and regulations thereunder.

(2) No registrant, affiliate of a registrant, or person acting on behalf of a registrant in connection with a public offering registered pursuant to Section 10 of the Act may give, directly or indirectly, compensation which is in violation of this R164-12-1f.

(3) No agent, underwriter or affiliate of an agent or underwriter may receive, directly or indirectly in connection with a public offering registered pursuant to Section 10 of the Act, compensation which is in violation of this R164-12-1f.

C. Definitions

As used in this R164-12-1f, the following terms shall have the indicated meanings:

(1) "Compensation" includes all cash; the value of all options, warrants, rights and other securities; the gross amount of the underwriter's discount; total expenses payable by the issuer, whether accountable or non-accountable, to or on behalf of the participant in the distribution which would normally be paid by the participant in the distribution; counsel's fees and expenses of the participant in the distribution payable by the issuer; finder's fees; financial consulting and advisory fees; and the value of all contracts and agreements with respect to the issuer or its affiliates which are connected with the distribution or with the negotiation of compensation in the distribution.

(2) "Corporate equity security" means any security which presently represents an ownership interest in a corporate entity and which includes common stock and preferred stock but does not include a security which is not presently, but is at some future time convertible into, a corporate equity security.

(3) "Participant in the distribution" means any person offering, selling, delivering, distributing, soliciting interest in or otherwise involved in the distribution, offer or sale of securities to the public or to any member of the public and includes persons commonly known as underwriters, agents and finders.

D. Maximum Compensation

(1) Distributions of Corporate Equity Securities: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of corporate equity securities is an amount equal to 15% of that portion of the public offering price of the securities being distributed which is actually received by or on behalf of the registrant; provided, however, that any securities issued in connection with such distribution comply with paragraph F of this R164-12-1f.

(2) All Other Distributions: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of securities other than corporate equity securities shall be 20% of that portion of the public offering price of the securities being sold which is actually received by or on behalf of the registrant; provided, however, that any securities issued also comply with paragraph F of this R164-12-1f.

E. Determination of Amount Received by or on Behalf of the Registrant

The amount of the public offering price which is actually received shall be determined as follows:

(1) The following shall be included:

(a) Cash received;

(b) Fair market value of any securities received; and

(c) Fair market value of any tangible property received excluding items listed in subparagraph E(2) of this R164-12-1f.

(2) The following shall be excluded:

(a) Promissory notes or similar promises to provide cash or property in the future;

(b) Assessments, whether conditional or obligatory; and

(c) Intangible property such as patents, royalties, etc.

F. Securities Issued to Participants in a Distribution

(1) Options or Warrants:

Options or warrants issued to participants in a distribution must be justified by the applicant. Options or warrants will be considered justified if all of the conditions of this paragraph F are met.

(a) The options or warrants are issued only to a broker-dealer registered with this Division and are not transferable except in cases where the broker-dealer is a partnership and then only within the partnership.

(b) The number of shares covered by all options or warrants does not exceed ten percent of the shares to be outstanding upon completion of the offering.

(c) The options or warrants do not exceed five years in duration and are exercisable no sooner than one year after issuance.

(d) The initial exercise price of the options or warrants is at least equal to the public offering price plus a step-up of said public offering price of either seven per cent each year they are outstanding, so that the exercise price throughout the second year is one hundred seven per cent, throughout the third year one hundred fourteen per cent, throughout the fourth year one hundred twenty-one per cent, throughout the fifth year one hundred twenty-eight per cent; or in the alternative, twenty per cent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the broker-dealer at the time that the options or warrants are issued.

(e) The options or warrants are issued by a relatively small company, which is in the promotional stage, or which, because of its size, lacks public ownership of its shares, or other facts and circumstances make it appear that the issuance of options is necessary to obtain competent investment banking services.

(f) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the broker-dealer without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

(g) The total amount of options and warrants issued or reserved for issuance at the date of the public offering shall be reasonable. The amount of options and warrants shall be presumed reasonable if the number of shares represented by such options and warrants does not exceed a number equal to ten per cent of the number of shares outstanding during the period the registration is in effect. The number of options and warrants reserved for issuance may be disregarded if the issuer

files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.

(2) The value of any securities received, which value shall be included in determining the amount of compensation for the purposes of paragraph D of this R164-12-1f shall be as follows:

(a) Options/Warrants: The market value of such options or warrants, if any, shall be used. In cases where no market value exists, a presumed fair value of twenty per cent of the public offering price of the shares to which the options or warrants pertain shall be used, unless evidence indicates that a contrary valuation exists.

(b) Stock: The amount of compensation received when stock is issued shall be the difference between the cost of such stock and the proposed public offering price or, in the case of securities with a bona fide independent market, the cost of such stock and price of the stock on the market on the date of purchase. If, however, there is a binding obligation to hold such stock for a substantial period of time, an adjustment in such valuation may be made.

(c) Convertible Securities: The amount of compensation received when convertible securities are issued shall be the difference between the conversion price and the proposed public offering price or, in the case of securities with a bona fide independent market, the conversion price and the price of the stock on the market on the date of purchase.

(3) Equity Securities Issued to Participants in a Distribution:

Equity securities or securities convertible into equity securities, when combined with securities issued pursuant to subsection (F)(1) of this Rule, acquired by a participant in a distribution, whether acquired prior to, at the time of, or after, but which are determined to be in connection with or related to, the offering shall not in the aggregate be more than ten percent of the total number of units being offered in the proposed offering. The maximum limitation in the case of "best efforts" underwritings or participations shall be on the basis of no more than one unit received for every ten units actually sold. For the purposes of this paragraph:

(a) No securities shall be issued to a participant in a distribution where such participant is not a broker-dealer registered with this Division;

(b) Over-allotment shares and shares underlying warrants, options, or convertible securities which are part of the proposed offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

(c) In an exceptional or unusual case involving an offering of convertible securities of a company whose stock already has a public market and where the circumstances require, taking into consideration the conversion terms of the securities to be received by the above persons, the receipt of underlying shares by such persons aggregating the above referred to ten percent limitation may be considered improper and a lesser amount considered more appropriate.

(d) In an exceptional or unusual case, where a large number of shares of a company are already outstanding and/or the purchase price of the securities, risk involved or the time factor as to acquisition or other circumstances justify, a variation from the above limitations may be permitted but in all cases the burden of demonstrating justification for such shall be upon the person seeking the variation.

KEY: securities regulation
February 2, 2010 **61-1-12(1)(f)**
Notice of Continuation July 30, 2007

R164. Commerce, Securities.
R164-18. Procedures.
R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 63G-4-202, 63G-4-203, 63G-4-503, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "CRD" means the Central Registration Depository, Inc.

(3) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(4) "Division" means Division of Securities, Utah Department of Commerce.

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63G-4-202(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

(4) NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

(5) Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

(6) Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13(1)(c), or "agent" as defined in Subsection 61-1-13(1)(b);

(7) Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13(1)(q), or "investment adviser representative" as defined in Subsection 61-1-13(1)(r);

(8) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(9) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(10) Request for order releasing impounded funds pursuant to Section R164-11-7b;

(11) Request for confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(12) Request for confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(13) Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

(14) Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(15) Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

(d) Grant of registration by coordination pursuant to Section 61-1-9;

(e) Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

(f) Grant of registration by qualification pursuant to Section 61-1-10;

(g) Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

(h) Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

(i) Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

(j) Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13(1)(c), or "agent" pursuant to Subsection 61-1-13(1)(b);

(k) Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13(1)(q), or "investment adviser representative" pursuant to Subsection 61-1-13(1)(r);

(l) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(m) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(n) Order requiring filing of prospectus, sales literature, etc.pursuant to Section 61-1-15;

(o) Order releasing impounded funds pursuant to Section R164-11-7b;

(p) Order to show cause pursuant to Subsection 61-1-20(1)(a);

(q) Confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(r) Confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(s) Confirmation of manual listing exemption pursuant to Section R164-14-2b;

(t) Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(u) Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

(e) Order denying or revoking exemption under Subsection 61-1-14(2)(j)(ii)(E)(II).

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedure

February 2, 2010 61-1-18.3

Notice of Continuation July 30, 2007 61-1-4

61-1-11

R202. Community and Culture, Housing and Community Development, Community Services.
R202-101. Qualified Emergency Food Agencies Fund (QEFAF).
R202-101-1. Designation as a Qualified Emergency Food Fund Agency.

A. A qualified emergency food agency is an organization that is: a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or b) an association of governments which, as part of its activities operates a program that has as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons. For initial designation, an organization shall file an application with the State Community Services Office (SCSO) and must be approved as a qualified emergency food agency before receiving distributions under Utah Code Section 9-4-1409. The application form and instructions are available on the SCSO Website at http://housing.utah.gov/scso/qefaf.html

B. After initial designation as a qualified emergency food agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments must continue to operate a program which has, as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons.

C. All organizations shall submit a current Board Roster and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Memorandum of Understanding each year.

R202-101-2. Use of Funds.

Funds received from the Qualified Emergency Food Agency Fund must be expended by the Qualified Agency only for purposes related to: a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or b) providing food and food ingredients directly to low-income persons.

R202-101-3. Allowable Expenditures.

A. Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

B. Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

C. Providing - Expenditures directly related to providing food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

D. Direct staff costs - is defined as salaries and wages, employer's payroll taxes, and fringe benefits for staff directly involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-QEFAF supported activities must be supported by time and activity reports.

E. Food and food ingredients - reasonable and necessary purchases of food and food ingredients that are warehoused, distributed, and/or provided directly to eligible low-income individuals and households is allowable.

F. Administrative Expenditures - QEFAF funds expended for administrative costs shall not exceed 5% of the total distributions received under the QEFAF program for any fiscal year. Any QEFAF funds unexpended as of the end of Qualifying Agency's fiscal year should be clearly identified and treated as temporarily restricted funds.

R202-101-4. Non-Allowable Expenditures.

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs mentioned above, are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients are not allowed. Any other expenditure not specifically listed under the sections above not allowed.

R202-101-5. Submission of Claims.

A. Claims shall be submitted no more frequent than monthly. Claims must be submitted by the Qualified Agency online using the Web Grants system at the following website address: http://www.webgrants.community.utah.gov

B. Claims shall be based on the eligible pounds of food donated to Qualified Agency during the fiscal year beginning July 1, 2009 and ending June 30, 2010 valued at the rate of $0.12 per pound.

R202-101-6. Limited Funds Available.

Funds available under the Qualified Emergency Food Agency Fund are limited. In the event funds deposited into the Qualified Emergency Food Agency Fund are insufficient to meet the claims for distribution received, the State Community Services Office (SCSO) shall make distributions to Qualified Agencies in the order that SCSO receives the claims. The time submitted as recorded in the Web Grants system shall be used to determine the order in which claims are received by SCSO.

R202-101-7. Eligible Pounds.

Eligible pounds shall mean the aggregate number of pounds of food and food ingredients, as defined in Utah Code Section 59-12-102 that are a) donated to Qualified Agency on or after July 1, 2009; and b) for which Utah sales or use tax was paid by the person donating the food or food ingredients.

R202-101-8. Recordkeeping Requirements.

A. Qualified Agency agrees to maintain receipts and other original records for donations of food and food ingredients, including schedules and work papers supporting claims made under the Qualified Emergency Food Agency Fund program. Such records must be maintained for a period of three years

following the date of the last refund for fiscal year ending June 30, 2010.

B. Qualified Agency agrees to maintain a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all QEFAF funds, including accounting records that are supported by source documentation sufficient to determine that QEFAF funds were expended only for purposes as stated in Utah Code 9-4-1409 and the Use of Funds section above.

C. Qualified Agency agrees to maintain effective control and accountability for all QEFAF funds and all property, equipment, and other assets acquired with QEFAF funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the last refund for fiscal year ending June 30, 2010.

R202-101-9. Monitoring.

SCSO will monitor Qualified Agency's claims and may conduct one or more site visits to inspect records supporting the pounds of food and food ingredients claimed. SCSO may also review financial records to determine that distributions received are expended in accordance with Utah Code Section 9-4-1409(8). Qualified Agency agrees to provide all information needed by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

R202-101-10. Overpayment Recoupment.

A. Amounts claimed by Qualified Agency under this agreement that are determined by audit to be ineligible for reimbursement because a) such claims were based on ineligible food or food ingredient donations; or b) lack of adequate documentation to support the total poundage of food or food ingredient donations claimed shall be immediately returned to the State.

B. Expenditures of QEFAF funds determined by audit to be unallowable because 1) funds were used for purposes not specified above under Use of Funds; or 2) expenditures not supported by adequate source documentation shall be a) immediately returned to the State; or b) properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purposed specified under Use of Funds above.

R202-101-11. Training and Technical Assistance.

SCSO agrees to provide training and technical assistance to Qualified Agency in regards to accessing and submitting a claim online using the Web Grants system. Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

KEY: Qualified Emergency Food Agencies Fund, QEFAF, antipoverty programs, community action programs
February 22, 2010 9-4-1409

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 professional development" 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 professional development, 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 professional development, or

(b) a request submitted through the computerized professional development 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 professional development.

(3) Each clock hour of authorized professional development time equals one professional development point.

(4) The professional development 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 professional development 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 18, 2010	**53A-6-104**
	53A-1-401(3)

R305. Environmental Quality, Administration.
R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation.
R305-5-1. Purpose.

The purpose of this rule is to comply with the provisions of UCA Section 19-1-206.

R305-5-2. Authority.

This rule is established under UCA Section19-1-206(6) which authorizes the Department of Environmental Quality to make rules governing health insurance in certain design and construction contracts.

R305-5-3. Definitions.

(1) "Employee" means an "employee," "worker," or "operative" as defined in UCA Section 34A-2-104 who works in the State at least 30 hours per calendar week, and meets employer eligibility waiting requirements for health care insurance which may not exceed 90 days from the date of hire.

(2) "Health benefit plan" has the same meaning as provided in UCA Section 31A-1-301.

(3) "Qualified health insurance coverage" means a health benefit plan that at the time the contract is entered into or renewed:

(a) provides coverage that is actuarially equivalent to the current benefit plan determined by the Children's Health Insurance Program under Section 26-40-106, and under which the employer pays at least 50% of the premium for the employee and the dependents of the employee;

(b) is a federally qualified high deductible health plan that has the lowest deductible permitted for a federally qualified high deductible health plan and an out of pocket maximum that does not exceed three times the amount of the annual deductible, and under which the employer pays 75% of the premium for the employee and the dependents of the employee; or

(c) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under R305-5-3(3)(a), and under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.

(4) "Subcontractor" has the same meaning provided for in UCA Section 63A-5-208.

R305-5-4. Applicability of Rule.

(1) Except as provided in Subsection R305-5-4(2) below, this Rule R305-5 applies to all contracts entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, if:

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

(b) the prime contract is in the amount of $1,500,000 or greater; or a subcontract is in the amount of $750,000 or greater.

(2) This Rule R305-5 does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this Rule R305-5 jeopardizes the receipt of federal funds;

(b) the contract or agreement is between the department or a division or board of the department and another agency of the state, the federal government, another state, an interstate agency, a political subdivision of this state, or a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is a sole source contract or an emergency procurement.

(3) This Rule R305-5 does not apply to a change order as defined in UCA Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by R305-5-4(1).

R305-5-5. Compliance Requirement.

A contractor or subcontractor that is subject to the requirements of R305-5 shall have and will maintain an offer of qualified health insurance coverage for the contractor's or subcontractor's employees and dependents during the duration of the contract.

R305-5-6. Demonstration of Compliance.

(1) A contractor or subcontractor subject to this rule R305-5 shall demonstrate compliance with R305-5-5 by submitting to the department a written certification of compliance initially no later than the time of the execution of the contract by the contractor and thereafter on an annual basis unless the department requests a biannual certification.

(2) The written certification of compliance shall include information demonstrating that qualified health insurance coverage as defined in R305-5-3(3) is being offered. The actuarially equivalent determination in R305-5-3(3) is met by the contractor or subcontractor if the contractor or subcontractor provides the department with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or subcontractor or their insurer.

R305-5-7. Effect of Failure to Comply.

The failure of a contractor or subcontractor to provide health insurance as required by R305-5-5 may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under UCA Section 63G-6-801 or any other provision in UCA 63G, Chapter 6, Part 8, Legal and Contractual Remedies, and 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.

R305-5-8. Penalties, Sanctions, and Liabilities.

(1) Pursuant to UCA Section 19-1-206(4)(b), a person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection R305-5-5 and R305-5-6 is guilty of an infraction.

(2) Pursuant to UCA Section 19-1-303 and UCA Section 19-1-206(6), a contractor or subcontractor who fails to comply with R305-5-5 and R305-5-6 is subject to an administrative civil penalty of up to $5000 per day, except that monetary penalties may not exceed 50% 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.

(3) If a contractor or subcontractor intentionally violates the provisions of R305-5-5, the contractor or subcontractor is subject to:

(a) 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;

(b) 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; and

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

(4) In addition to the penalties imposed under R305-5-8 and the referenced statutes and rules, a contractor or

subcontractor who violates the provisions of UCA Section 19-1-206 and R305-5, pursuant to UCA Section 19-1-206(7), shall be liable to the employee for health care costs not covered by insurance.

KEY: contract requirements, health insurance
February 16, 2010 19-1-206

R313. Environmental Quality, Radiation Control.
R313-34. Requirements for Irradiators.
R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 2001 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Executive Secretary or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the 2001 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35; and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiator, survey, radiation, radiation safety
September 14, 2001 19-3-104
Notice of Continuation February 10, 2010

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-1. Definitions.

1.1. "Absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.2. "Absorption system" means a device constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.3. "Absorption trench" means standard trenches, shallow trenches with capping fill, and chambered trenches constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.4. "Alternative onsite wastewater system" means a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state.

1.5. "At-Grade" System means an alternative type of onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within a fill body that extends above that grade.

1.6. "Bedrock" means the rock, usually solid, that underlies soil or other unconsolidated, superficial material.

1.7. "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

1.8. "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, an onsite wastewater system or other point of disposal. It is synonymous with "house sewer".

1.9. "Chambered trench" means a type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design, which may be used as a substitute for the gravel media with a perforated distribution pipe.

1.10. "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

1.11. "Conventional system" means an onsite wastewater system which consists of a building sewer, a septic tank, and an absorption system consisting of a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an absorption bed.

1.12. "Curtain drain" means any ground water interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

1.13. "Deep wall trench" means an absorption system consisting of deep trenches filled with clean, coarse filter material, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe, into which septic tank effluent is discharged for seepage into the soil.

1.14. "Division" means the Utah Division of Water Quality.

1.15. "Disposal area" means the entire area used for the subsurface treatment and dispersion of septic tank effluent by an absorption system.

1.16. "Distribution box" means a watertight structure which receives septic tank effluent and distributes it concurrently, in essentially equal portions, into two or more distribution pipes leading to an absorption system.

1.17. "Distribution pipe" means approved perforated pipe used in the dispersion of septic tank effluent into an absorption system.

1.18. "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, excluding non-domestic wastewater. It is synonymous with the term "sewage".

1.19. "Domestic septage" means the semi-liquid material that is pumped out of septic tanks receiving domestic wastewater. It consists of the sludge, the liquid, and the scum layer of the septic tank.

1.20. "Drainage system" means all the piping within public or private premises, which conveys sewage or other liquid wastes to a legal point of treatment and disposal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

1.21. "Drop box" means a watertight structure which receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

1.22. "Dry Wash" means the dry bed of an intermittent stream that flows only after heavy rains and is often found at the bottom of a canyon.

1.23. "Dwelling" means any structure, building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments.

1.24. "Earth fill" means an excavated or otherwise disturbed suitable soil which is imported and placed over the native soil. It is characterized by having no distinct horizons or color patterns, as found in naturally developed undisturbed soils.

1.25. "Effluent lift pump" means a pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

1.26. "Ejector pump" means a device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

1.27. "Experimental onsite wastewater system" means an onsite wastewater treatment and disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

1.28. "Final local health department approval" means, for the purposes of the grandfather provisions in R317-4-4 (Table 1, footnote a) and R317-4-3, the approval given by a local health department which would allow construction and installation of subdivision improvements. Note: Even though final local health department approval may have been given for a subdivision, individual lot approval would still be required for issuance of a building permit on each lot.

1.29. "Ground water" means that portion of subsurface water that is in the zone of soil saturation.

1.30. "Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

1.31. "Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from

disappearing from time to time as a result of drainage over the edge of or through the perching bed.

1.32. "Gulch" is a small rocky ravine or a narrow gorge, especially one with a stream running through it.

1.33. "Gully" is a channel or small valley, especially one carved out by persistent heavy rainfall or one holding water for brief periods of time after a rain storm or snow melt.

1.34. "Impervious strata" means a layer which prevents water or root penetration. In addition, it shall be defined as having a percolation rate greater than 60 minutes per inch.

1.35. "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

1.36. "Liquid waste operation" means any business activity or solicitation by which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.37. "Liquid waste pumper" means any person who conducts a liquid waste operation business.

1.38. "Local health department" means a city-county or multi-county local health department established under Title 26A.

1.39. "Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.

1.40. "Malfunctioning or failing system" means an onsite wastewater system which is not functioning in compliance with the requirements of this regulation and includes, but is not limited to, the following:

A. Absorption systems which seep or flow to the surface of the ground or into waters of the state.

B. Systems which have overflow from any of their components.

C. Systems which, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system.

D. Systems discharging effluent which does not comply with applicable effluent discharge standards.

E. Leaking septic tanks.

1.41. "Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

1.42. "Mound System" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the existing site grade, and the absorption system is contained in a mounded fill body above that grade.

1.43. "Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

1.44. "Non-public water source" means a culinary water source that is not defined as a public water source.

1.45. "Onsite Wastewater System" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

1.46. "Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

1.47. "Percolation test" means the method used to measure the percolation rate of water into soil as described in these rules.

1.48. "Permeability" means the rate at which a soil transmits water when saturated.

1.49. "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.50. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety (Section 19-5-102).

1.51. "Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

1.52. "Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in R309.

1.53. "Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

1.54. "Replacement area" means sufficient land with suitable soil, excluding streets, roads, and permanent structures, which complies with the setback requirements of these rules, and is intended for the 100 percent replacement of absorption systems.

1.55. "Restrictive layer" means a layer in the soil that because of its structure or low permeability does not allow water entering from above to pass through as rapidly as it accumulates. During some part of every year, a restrictive layer is likely to have temporarily perched ground water table accumulated above it.

1.56 "Rotary tilling" means a tillage operation - working land by plowing, harrowing and manuring in order to make land ready for cultivation - employing power driven rotary motion of the tillage tool to loosen, shatter and mix soil.

1.57. Scarification - loosening and breaking up of soil.

1.58. "Scum" means a mass of sewage solids floating on the surface of wastes in a septic tank which is buoyed up by entrained gas, grease, or other substances.

1.59. "Seepage pit" means an absorption system consisting of a covered pit into which septic tank effluent is discharged.

1.60. "Septic tank" means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system meeting the requirements of these rules.

1.61. "Septic tank effluent" means partially treated sewage which is discharged from a septic tank.

1.62. "Sewage holding tank" means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.

1.63. "Shall" means a mandatory requirement except when modified by action of the Department on the basis of justifying facts submitted as part of plans and specifications for a specific installation.

1.64. "Shallow trenches with capping fill" means an absorption trench which meets all of the requirements of standard trenches except for the elevation of the installed trench. The minimum depth of installation is 10 inches from the natural existing grade to the trench bottom. The gravel and soil fill required above the pipe are placed as a "cap" to the trenches, installed above the natural existing grade.

1.65. "Should" means recommended or preferred and is intended to mean a desirable standard.

1.66. "Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building, and shall be the only dwelling located on a lot with the usual accessory buildings.

1.67. "Sludge" means the accumulation of solids which have settled in a septic tank or a sewage holding tank.

1.68. "Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

1.69. "Standard Trench" means an absorption system consisting of a series of covered, gravel-filled trenches into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.70. "Waste" or "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water (Section 19-5-102).

1.71. "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.72. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except those bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, are not "waters of the state" (Section 19-5-102).

R317-4-2. Onsite Wastewater Systems - Administrative Requirements.

2.1. Scope. This rule shall apply to onsite wastewater systems. Nothing contained in this rule shall be construed to prevent the permitting local health department from:

A. adopting stricter requirements than those contained herein;

B. issuing a renewable operating permit at a frequency not exceeding once every five years with an inspection showing a satisfactory performance of the permitted system by the department's staff before renewal;

C. taking necessary steps for ground water quality protection through adoption of a ground water quality protection management policy based on a ground water management study, or an onsite systems management planning policy and land use planning through the county's agency;

D. prohibiting any alternative system within the department's jurisdiction;

E. assessing fees for administration of alternative systems

F. requiring the conventional and alternative system in its jurisdiction, be placed under an umbrella of:

1. a responsible management entity overseen by the local health department; or,

2. a contract service provider overseen by the local health department; or

3. a management district, body politic, created by the county for the purpose of operation, maintenance, repairs and monitoring of alternative or all onsite systems.

2.2 The local health department having jurisdiction must obtain approval from the Utah Division of Water Quality to administer alternative systems program, as outlined in this section, before permitting alternative systems.

A. The local health department request for approval must include:

1. A description of its plan to properly manage these systems to protect public health. This plan must include:

a. A description of review, inspection and monitoring procedures of these systems;

b. Resolutions of the Local Board of Health and the County Commission supporting this request;

c. A description of the technical capability and training plans of the staff, and availability of resources to adequately manage the increased work load;

d. A statement from the county attorney of the county's legal authority to implement and enforce correction of malfunctioning systems and its commitment to exercise this authority; and,

e. A summary of a ground water quality protection management policy based on a ground water management study, or polices for both onsite systems management and land use planning determined by the county's agency, including steps taken or planned to be taken for implementation of the policy.

2. An agreement to:

a. advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;

b. ensure the existence of the alternative system is recorded on the deed of ownership for that property;

c. provide oversight of installed systems;

d. inspect all installed systems at frequency specified in this rule, through:

i. the department's staff, or,

ii. a contracted service provider, or,

iii. a responsible management entity, or,

iv. a management district body politic created by the county for the purpose of managing onsite systems:

v. maintenance of records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as, but not limited to, overflow, surfacing, ponding and nuisance;

e. Submit an annual report on or before September 1 of the calendar year, to the Utah Division of Water Quality showing:

i. type and number of systems approved, installed, modified, repaired, failed, inspected;

ii. a summary of enforcement actions taken, pending and resolved;

iii. a summary of performance of water quality data collected;

iv. a summary of the performance of contractors, responsible management entities, or management districts operating, maintaining and monitoring alternative systems; and,

v. management options followed in the reporting year and planned to be followed in the period after the reporting period.

f. Description of Management options to be followed:

i. Using the health department staff for all inspections and monitoring of permitted alternative systems; or,

ii. Contracting with a responsible management entity employing qualified service providers for operating, maintaining and monitoring alternative systems, certified in accordance with R317-11; or,

iii. Using a management district, body politic created by the county for the purpose of managing onsite systems with an annual performance review; or,

iv. An appropriate combination of contract providers or a District, body politic.

B. All alternative systems will be inspected as follows:

1. All at-grade and earth fill systems shall be monitored at a period of six months after initial use, and annually thereafter for a total of five years

2. All mound and packed bed media systems shall be monitored once every six months for the life of that system by:

a. the local health department staff, or,

b. a contract service provider overseen by the local health department, or,

c. a responsible management entity overseen by the local health department, or,

d. a management district, body politic created by the county for the purpose of managing onsite systems.

2.3. Failure to Comply With Rules. Any person failing to comply with This rule will be subject to action as specified in Section 19-5-115 and 26A-1-123.

2.4. Onsite Wastewater System Required. The drainage system of each dwelling, building or premises covered herein shall receive all wastewater (including but not limited to bathroom, kitchen, and laundry wastes) and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made as follows:

A. To an onsite wastewater system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of wastewater system acceptable under R317-1, R317-3, R317-5, or R317-560.

2.5. Flows Prohibited From Entering Onsite Wastewater Systems. No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non domestic wastes such as chemicals, paints, or other substances which are detrimental to the proper functioning of an onsite wastewater system shall not be disposed of in such systems.

2.6. No Discharge to Surface Waters or Ground Surface. Effluent from any onsite wastewater system shall not be discharged to surface waters or upon the surface of the ground. Sewage shall not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

2.7. Repair of a Failing or Unapproved System. Whenever an onsite wastewater system is found by the regulatory authority to create or contribute to any dangerous or unsanitary condition which may involve a public health hazard, a malfunctioning system, or deviates from the plans and specifications approved by such health authorities, the regulatory authority may order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

2.8. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank wastes pumped out or otherwise disposed of in an approved manner, and the septic tank filled completely with earth, sand, or gravel within 30 days. The septic tank may also be removed within 30 days , at the owners discretion. The contents of a septic tank or other treatment device shall be disposed of only in a manner approved by the regulatory authority.

R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

A. A building sewer.

B. A septic tank.

C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Division of Water Quality. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

A. Name and location of proposed development.

B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.

E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.

F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned , and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.

H. Surface drainage systems shall be included on the plan

, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.

K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits, are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. The local health department may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation test data. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems , onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.

2. Location of dwelling, with distances from street and property lines.

3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.

4. Capacity of septic tank and dimensions and cross-section of absorption system.

5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration,

extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4. After January 1, 2002, the design must be prepared in accordance with certification requirements in R317-11.

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped indicating approval. Construction shall not commence until the plans have been approved by the regulatory authority. The installer shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:

a. Date of application.

b. Direction of north.

c. Lot size and dimensions.

d. Legal description of property if available.

e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.

f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

g. Location and explanation of type of dwelling to be served by an onsite wastewater system.

h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

i. Location and dimensions of the essential components of the onsite wastewater system.

j. Location of soil exploration pit(s) and percolation test holes.

k. Location of building sewer and water service line to serve dwelling.

l. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

m. Distance to nearest public water main and size of main.

n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

o. Location of easements or drainage right-of-ways affecting the property.

p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.

2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

a. Building drain outlet.

b. The inlet and outlet inverts of the septic tank(s).

c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.

d. The final ground surface over the absorption system.

e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)

9. Absorption system details which include the following:

a. Schedule or grade, material, and diameter of distribution pipes.

b. Required and proposed area for absorption system.

c. Length, slope, and spacing of each distribution pipeline.

d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

h. Cross section of absorption system showing:

i. Depth and width of absorption system excavation.

ii. Depth of distribution pipe.

iii. Depth of filter material.

iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to

separate filter material from backfill.

v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from onsite wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness. Testing may be performed in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks shall be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank, be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

R317-4-4. Onsite Wastewater Systems Design Requirements.

4.1. Site Location and Installation.

A. Onsite wastewater systems are not suitable for all areas and situations. Location and installation of each system, or other approved means of disposal, shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the State. Systems shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, to include all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement must accommodate the entire onsite wastewater system, including setbacks (see Table 2) which extend beyond the property line.

B. In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to ground water and bedrock; soil characteristics and depth; potential flooding or storm catchment; possible expansion of the system, and future connection to a public sewer system.

4.2. Lot Size Requirements.

A. One of the following two methods shall be used for determining minimum lot size for a single-family dwelling when an onsite wastewater system is to be used:

METHOD 1:-The local health department having jurisdiction may determine minimum lot size. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report which accurately takes into account, but is not limited to, the following factors:

A. Soil type and depth.

B. Area drainage, lot drainage, and potential for flooding.

C. Protection of surface and ground waters.

D. Setbacks from property lines, water supplies, etc.

E. Source of culinary water.

F. Topography, geology, hydrology and ground cover.

G. Availability of public sewers.

H. Activity or land use, present and anticipated.

I. Growth patterns.

J. Individual and accumulated gross effects on water quality.

K. Reserve areas for additional subsurface disposal.

L. Anticipated sewage volume.

M. Climatic conditions.

N. Installation plans for wastewater system.

O. Area to be utilized by dwelling and other structures.

Under this method, local health departments may elect to involve other affected governmental entities and the Division in making joint lot size determinations. The Division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request.

METHOD 2:-Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Table 1 shall be met:

TABLE 1
Minimum Lot Size(a)

WATER SUPPLY	SOIL TYPE 1	2	3	4	5
Public(b)	12,000 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	--
Individual each lot(c)	1 acre	1.25 acres	1.5 acres	1.75 acres	--

SOIL TYPE	DRAINAGE	PERCOLATION RATE(d)(e)	APPROXIMATE SOIL CLASSIFICATION SYMBOL (USDA Soil Classification System)(e)(f)
1	Good	1-15	Sand, Loamy Sand
2	Fair	16-30	Sandy Loam, Loam
3	Poor	30-45	Loam, Silty Loam
4	Marginal	46-60	Sandy Clay Loam. Silty Clay Loam,(g).
5	Unacceptable (h)		Clay Loam, Clay Bedrock, fractured bedrock, hardpan, (including unacceptable ground water table elevations)

FOOTNOTES

(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements shall not apply to building lots which have been recorded or have received final local health department approval prior to May 21, 1984. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded and other approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot must also be acceptable to the regulatory authority.

(b) This category shall also include lots served by a nonpublic water source that is not located on the lots.

(c) See the isolation requirements in Table 2.

(d) When deep wall trenches or seepage pits will be used, the percolation test may be estimated by a qualified person in accordance with R317-4-9.

(e) When there is a substantial discrepancy between the percolation rate and the approximate soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.

(f) See Table 10 for a more detailed description of the USDA soil classification system.

(g) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(h) Faster than one minute per inch, slower than 60 minutes per inch, or unsuitable soil formations.

B. Determination of minimum lot size by Methods 1 and 2 would not preempt local governments from establishing larger minimum lot sizes.

C. Available pertinent land for construction of other than single-family dwellings should have a minimum net available area in the amount of 22 square feet per gallon of estimated sewage computed from the fixture unit values established by Table 3 or other acceptable methods. Each fixture unit should be rated at not less than 25 gallons per day. One-half of this pertinent land area should be available for the absorption system.

4.3. Isolation of Onsite Wastewater Systems. Minimum distances between components of an onsite wastewater disposal system and pertinent ground features shall be as prescribed in Table 2.

TABLE 2
Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Building Sewer	to Septic Tank
Public Water Supply Sources		
Protected Aquifer Well (c)	100	100
Unprotected Aquifer Well (c)	(d)	(d)
Spring (c)	(d)	(d)
Individual or Nonpublic Water Supply Sources		
Grouted Well (k)	25	50
Ungrouted Well (k)	25	50
Spring (c)	25	50
Non-culinary Well or Spring	--	25
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	--	25
Lake, Pond, Reservoir	--	25
Culinary Water Supply Line	(g)	10
Foundation of any building including garages and outbuildings:		
without foundation drains	3	5
with foundation drains	3	25
Curtain drains		
located up gradient	--	10
located down gradient	10	25
Property line	5	5
Swimming pool wall (subsurface)	3	10
Downslope cut bank or top of embankment	--	10
Dry washes, gulches, and gullies	--	25
Catch basin or dry well	--	5
Trees and shrubs (h)	--	--
Deep Wall Trench (b)	--	5
Absorption Bed	--	5
Standard/Chamber Trench	--	5

Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Standard Trench	to Deep Wall Trench	to Absorption Bed
Public Water Supply Sources			
Protected Aquifer Well (c)	100	100	100
Unprotected Aquifer Well (c)	(d)	(d)	(d)
Spring (c)	(d)	(d)	(d)
Individual or Nonpublic Water Supply Sources			
Grouted Well (k)	100	100	100
Ungrouted Well (k)	200(e)	200(e)	200(e)
Spring (c)	200(e)	200(e)	200(e)
Non-culinary Well or Spring	100	100	100
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	100(f)	100(f)	100(f)
Lake, Pond, Reservoir	100	100	100
Culinary Water Supply Line	10(g)	10(g)	10(g)
Foundation of any building including garages and outbuildings:			
without foundation drains	5	20	5
with foundation drains	100	100	100
Curtain drains			
located up gradient	20	20	20
located down gradient	100	100	100
Property line	5	10	10
Swimming pool wall (subsurface)	25	25	25
Downslope cut bank or top of embankment	50	50	50
Dry washes, gulches, and gullies	50	50	50
Catch basin or dry well	25	25	25
Trees and shrubs (h)	5	5	5
Deep Wall Trench (b)	10	(i)	10
Absorption Bed	10	10	10
Standard Trench	(j)	10	10

FOOTNOTES

(a) All distances are from edge to edge. Where surface waters are involved, the distance shall be measured from the high water line.

(b) Seepage pits shall meet the same separation distances specified for deep wall trenches, except that seepage pits shall be separated from one another by at least a distance equal to 3 times the greatest diameter of either pit, with a minimum separation of 15 feet.

(c) As defined by R309-113-6. Distances to avoid contamination cannot always be predicted for varying conditions of soil or underlying bedrock and ground water. Absorption systems should be located as far away from wells, springs, and other water supplies as is practicable, and not on a direct slope above them. Compliance with separation requirements does not guarantee acceptable water quality in every instance. This is particularly applicable with shallow sources of ground water. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.

(d) It is recommended that the listed concentrated sources of pollution be located at least 1500 feet or as required by the Drinking Water Source Protection rules, from unprotected aquifer wells and springs used as public water sources. Any proposal to locate closer than 1500 feet from the property line must be reviewed and approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an onsite wastewater system closer than 1500 feet to a public unprotected aquifer well or spring must submit a report to the regulatory authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the regulatory authority may be 100 feet. R309-113 requires a protective zone, established by the public water supply owner, before a new source is approved. Public water sources which existed prior to the requirement for a protective zone may not have acquired one. Such circumstances must be reviewed by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source.

(e) Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority which considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.

(f) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed, a reduction in the distance requirement may be justified, but each case must be decided on its own merits by the regulatory authority.

(g) If the water supply line is for a public water supply, the separation distance must comply with the requirements of R309. No water service line shall pass over any portion of an onsite wastewater system.

(h) Components which are not watertight should not extend into actual or anticipated root systems of nearby trees. Trees and other large rooted plants shall not be allowed to grow over onsite wastewater systems. However, it is desirable to cover the area over onsite wastewater systems with lawn grass or other shallow-rooted plants. Onsite wastewater systems should not be located under vegetable gardens.

(i) For deep wall trenches, the separation distance must be at least equal to 3 times the deepest effective depth of either trench with a minimum separation of 12 feet between trenches.

(j) See R317-4-9, Table 9.

(k) A grouted well is a well constructed as required in the drinking water rules R309.

4.4. Estimates of Wastewater Quantity. Quantity of wastewater to be disposed of shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the nondisposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Table 3 shall be used to make estimates of flow. In no event shall the septic tank or absorption system be designed such that the anticipated maximum daily sewage flow exceeds the capacity for which the system was designed.

TABLE 3
Estimated Quantity of Domestic Wastewater(a)

Type of Establishment	Gallons per day
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarders	10 per person
Bowling Alleys	
a. with snack bar	100 per alley
b. with no snack bar	85 per alley
Camps	
a. modern camp	30 per person
b. semi-developed with flush toilets	30 per person
c. semi-developed with no flush toilets	5 per person
Churches	
a. per person	5
Condominiums, Multiple Family Dwellings, or Apartments	
a. with individual or common laundry facilities	400 per unit
b. with no individual or common laundry facilities	75 per person
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Gyms	
a. participant	25 per person
b. spectator	4 per person
Hairdresser	
a. per chair	50
b. per operator	35
Highway Rest Stops (improved, with restroom facilities)	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings (exclusive of industrial waste)	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space
Office Buildings and Business Establishments (Sanitary wastes only, per shift)	
a. with cafeteria	25 per employee
b. with no cafeteria	15 per employee
Picnic Parks (toilet wastes only)	5 per person
Restaurants(b)	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Recreational Vehicle Parks	
a. sanitary stations for self-contained vehicles	50 per space
b. dependent spaces (temporary or transient with no sewer connections)	50 per space
c. independent spaces (temporary or transient with sewer	

connections)	125 per space
Rooming House	40 per person
Sanitary Stations (per self-contained vehicle)	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations(c) (per vehicle served)	10
Single-Family Dwellings	(See Tables 7, 10, and 13)
Skating Rink, Dance Halls, etc.	
a. no kitchen wastes	10 per person
b. additional for kitchen wastes	3 per person
Ski Areas	
a. no kitchen wastes	10 per person
b. Additional for kitchen wastes	3 per person
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses(d)	10 per person
Taverns, Bars, Cocktail Lounges	20 per seat
Visitor Centers	5 per visitor

FOOTNOTES

(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.

(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

(c) Or, 250 gallons per day per pump.

(d) Or, 20 x water area + deck area.

4.5. Installation in Sloping Ground.

A. Construction of absorption systems on slopes in excess of 15 percent but not greater than 25 percent may be allowed providing that subsoil profiles indicate no restrictive layers of soil and appropriate engineering design is provided. Absorption systems placed in sloping ground shall be so constructed that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. Where the addition of fluids is judged to create an unstable slope, absorption systems will be prohibited.

B. Absorption systems shall be so located and constructed that there is a minimum of 50 feet from downhill slopes that exceed 35 percent.

C. Alternative systems shall be subject to the site slope limits specified in R317-4-11 for earth fill, "at-grade" systems and in mound systems.

4.6. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100 percent replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

4.7. Variance to Design Requirements

1. Requirements for which a variance may be approved.

An applicant may request a variance from onsite system design requirements, as specified in this section R317-4-4.7, in the following circumstances:

A. When site conditions do not allow a property owner to construct an onsite system so that the absorption bed or trench are separated from a dry wash, gully or gulch by a minimum distance of 50 feet as required under R317-4-4.3, Table 2; or,

B. When site conditions do not allow a property owner to construct an onsite system that complies with the slope and distance from slope requirements of R317-4-4.5.

2. Standards

A variance will not be approved unless the applicant demonstrates that all of the following conditions are met:

A. A wastewater system consistent with R317-4 and local health department requirements cannot be constructed and a connection to a public or community-based sewerage system is not available. This determination will be made in consultation with the local health department.

B. Wastewater from the proposed system will not contaminate ground water or surface water, and will not surface or move off site before it is adequately treated to protect public health and the environment.

C. No slope will fail, and there will be no other landslide or structural failure if the system is constructed and operated as proposed, even if all properties in the vicinity are developed with onsite wastewater systems.

D. Adjacent properties, including the current and reasonably anticipated uses of adjacent properties, will not be jeopardized if the proposed system is constructed and operated.

3. Procedure for requesting variance

A. A variance request shall be submitted to the Executive Secretary and to the local health department.

B. A variance request shall include the information and documentation described in R317-4-4.7.4.

C. The Executive Secretary may, with the approval of the Board, appoint an advisory committee to consider variance requests and make recommendations to the Executive Secretary. Any such advisory committee shall include at least one representative from a local health department. The Executive Secretary may refer any variance request to the variance advisory committee.

D. An applicant may request an advance determination about eligibility for a variance under R317-4-4.7.2(A) before the applicant submits a request that addresses the remaining requirements.

E. The Executive Secretary shall make a determination to approve or deny a variance request within 180 days of the receipt of a complete and technically adequate request. That determination may be reviewed by the Board as provided in Section 19-5-112, Utah Code Ann., and R317-9-3, Utah Administrative Code.

F. A local health department may not issue an approval or an operating permit for an onsite system that does not comply with all pertinent design requirements unless a variance has been approved; however a local health department is not required to issue an approval or operating permit based on the Executive Secretary's or Board's approval of a variance.

G. If approval of a variance is conditioned upon an applicant's commitment to record limiting conditions on the deed, the local health department may not issue an approval or operating permit for a system for which a variance has been approved until it confirms this condition has been fulfilled.

H. If approval of a variance is conditioned upon the local health department's oversight of the applicant's continuing compliance with specified conditions, the local health department may not issue an approval or operating permit for a system for which a variance has been approved until the applicant and the local health department have executed a written agreement regarding reimbursement of costs or any fees associated with that oversight.

I. All of the information required under R317-4-4.7.4, except the information required by R317-4-4.7.4(G) and (H), shall be submitted in a report by a professional engineer or a professional geologist that is certified at the appropriate level to perform onsite system design. An engineer or geologist who submits a report shall be licensed to practice in Utah and shall have sufficient experience and expertise to make the determinations in the report. Any such report shall include the engineer's or geologist's name and registration number, and a summary of qualifications. The report shall be imprinted with the engineer's or geologist's registration seal and signature.

4. Application requirements

The variance application shall include all information and documentation necessary to ensure that the standards in R317-4-4.7.2 will be met, including, as appropriate:

A. Information demonstrating that connection to a public or community-based sewerage system is not available, there is no other option for sewage disposal, and site conditions prevent construction or use of an onsite system that is in compliance with applicable legal requirements.

B. A detailed description of the proposed system, including engineering and reliability information, and information about its proposed location and a proposed replacement absorption bed or trench location, if necessary, to meet the requirements of R317-4-4.6.

C. A detailed characterization of current hydrological and hydrogeological conditions at the proposed site, and characterization of hydrological and hydrogeological conditions predicted for the site after the proposed system is in operation. The report shall include the following information with all supporting information, field investigations and explorations, as applicable:

1. A description of the tributary area;

2. Predictions, and supporting information, of ground water transport from the proposed system and of expected areas of ground water mounding if the system is operated as proposed in the application, including those in the tributary area;

3. Predictions, and supporting information, of the impact of runoff on disposal of wastewater;

4. Information about the rate of runoff for a 100-year storm and the time of concentration for a given tributary area;

5. Water surface profile throughout the area;

6. Analysis, for nitrate, chloride, and coliform group bacteria, of samples from the closest groundwater downgradient from any existing absorption system.

D. A stability analysis if the request is for a variance from slope requirements. The analysis shall include information about the geology of the site and surrounding area, soil exploration and testing.

E. An operation, maintenance and troubleshooting plan to keep the installed system operating as described in the application.

F. A contingency plan describing how a system that cannot meet the requirements of R317-4-4.7.2 will be replaced.

G. A signed statement from the applicant acknowledging that he or she will, after a 30 day period for correction, be required to cease use and occupancy of buildings associated with an onsite wastewater system that fails to meet the standards in R317-4-4.7.2, and that use and occupancy will be allowed again only after standards are met.

H. A proposal to record on the deed for the subject property a notice describing the system and an environmental easement, under the Environmental Institutional Control Act (Utah Code Ann. Sections 19-10-101 through -108), mandating any pertinent maintenance requirements or limiting conditions.

I. Documentation provided by the local health authority that the adjoining land owners have been notified and provided opportunity for comment of the proposed variance.

5. No violation of standards

No facility constructed pursuant to a variance shall violate the standards in R317-4-4.7.2.

R317-4-5. Soil and Ground Water Requirements.

5.1. Soil Requirements.

A. In areas where onsite wastewater systems are to be constructed, soil cover must be adequate to insure at least 48 inches of suitable soil between bedrock formations or impervious strata and the bottom of the absorption system excavation. In cases where an approved fill is used, there shall be at least three feet of suitable soil from prevailing site grade to bedrock formations or impervious strata. For the purposes of this regulation, unsuitable soil or bedrock formations shall be deemed to be (1) soil or bedrock formations which are so slowly permeable that they prevent downward passage of effluent, or (2) soil or bedrock formations with open joints or solution channels which permit such rapid flow that effluent is not renovated. This includes coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable for absorption systems. Where a mound system is used, there shall be at least two feet of suitable soil from prevailing site grade to formations which will permit such rapid flow that effluent will not be renovated.

B. A suitable soil for absorption systems shall meet the following criteria:

1. The distance between the maximum ground water table and the bottom of the absorption system excavation complies with the requirements of these rules.

2. Has the capacity to adequately disperse the designed effluent loading as determined by field percolation rates, or by other approved soil tests.

3. Does not exhibit inhibiting swelling or collapsing characteristics.

4. Does not visually exhibit a jointed or fractured pattern of an underlying bedrock.

5. Is not consolidated, cemented, indurated, or plugged by a buildup of secondary deposited calcium carbonate (caliche).

6. Acts as an effective effluent filter within its depth for the removal of pathogenic organisms.

7. Criteria for alternative onsite wastewater systems, as specified in R317-4-11 for earth fill systems, "at-grade" systems, and mound systems.

5.2. Ground Water Requirements.

A. In areas where absorption systems are to be constructed, the elevation of the anticipated maximum ground water table shall be at least 24 inches below the bottom of the absorption system excavation and at least 48 inches below finished grade. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21,1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the ground water table separation requirements of this regulation if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

B. The maximum ground water table shall be determined by one or more of the following methods:

1. Direct visual observation of the maximum ground water table in a soil exploration pit.

2. Regular monitoring of the "ground water table" or "ground water table, perched" in an observation well for a period of one year, or for the period of maximum ground water table. Ground water monitoring shall be required where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system, or where alternative onsite wastewater systems may be considered.

3. Observation of soil in a soil exploration pit for evidence

of crystals of salt left by the maximum ground water table; or chemically reduced iron in the soil, reflected by a mottled coloring.

C. If the highest elevation that the top of the ground water table or ground water table, perched, ever recorded, is expected to reach for any reason, including irrigation induced water table, over the full operating life of the conventional onsite wastewater system is within 24 inches of the bottom of the conventional onsite wastewater system the use of conventional onsite wastewater systems in the area of study will be prohibited.

D. Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

E. A curtain drain or other effective ground water interceptor may be required to be installed for an absorption system as a condition for its approval. The health authority may require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

5.3. Soil Exploration Requirements.

A. Suitable soil exploration pits, of sufficient size to permit visual inspection, and to a minimum depth of ten feet, or at least 48 inches below the bottom of proposed onsite wastewater systems, shall be dug on each absorption system site to determine the ground water table and subsurface soil and bedrock conditions. One end of each pit should be sloped gently to permit easy entry if necessary. A log of the soil and bedrock formations encountered must be submitted describing the texture, structure, and depth of each soil type, the depth of the ground water table encountered, and indications of the maximum elevation of the ground water table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System by qualified individuals. After January 1, 2002, the soil exploration and evaluation must be done in accordance with certification requirements in R317-11.

B. Proper safety precautions shall be taken whenever soil exploration pits or other excavations are dug for onsite wastewater systems.

5.4. Percolation Test Requirements. After January 1, 2002, percolation tests must be done in accordance with certification requirements in R317-11. At least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, shall be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, where the proposed property improvements will require large disposal systems, or where the health authority deems it necessary. Percolation tests shall be conducted in accordance with the instructions in this section. Absorption systems are not permitted in areas where the soil percolation rate is slower than 60 minutes per inch or faster than one minute per inch.

A. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for onsite wastewater systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the regulatory authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent. Copies of the recommended Percolation Test Certificate form can be obtained from the Division of Water Quality. The test certificate must contain the following:

1. a signed statement certifying that the tests were conducted in accordance with this rule;
2. The name of the individual conducting the tests;
3. The location of the property
4. the depth and rate of each test in minutes per inch;
5. the date of the tests;
6. the logs of the soil exploration pits, including a statement of soil explorations to a depth of ten feet. In the event that absorption systems will be deeper than six feet, soil explorations must extend to a depth of at least four feet below the bottom of the proposed absorption system including, deep wall trench, seepage pit or absorption bed;
7. a statement of the present and anticipated maximum ground water table;
8. all other factors affecting percolation test results.

C. Percolation tests shall be conducted at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, in accordance with the following:

1. Conditions Prohibited for Test Holes. Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests. Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Number and Location of Percolation Tests. One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present. Percolation tests conducted for deep wall trenches and seepage pits shall comply with R317-4-9. Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the regulatory authority and may be accepted only if conducted with an authorized representative present.

4. Test Holes to Commence in Specially Prepared Excavations. All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately six inches above the strata to be tested.

5. Type, Depth, and Dimensions of Test Holes. Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from four to 18 inches (preferably eight to twelve inches). The vertical sides shall be at least twelve inches deep, terminating in the soil at an elevation six inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

6. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument, in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Remove all loose soil from the bottom of the hole. Add two to three inches of clean coarse sand gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

7. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

8. Placing Water in Test Holes. Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

9. Percolation Rate Measurement, General. Necessary equipment should consist of a tape measure (with at least 1/16-inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

10. Test Procedure for Sandy or Granular Soils. For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of twelve inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least twelve inches above the gravel seeps away in ten minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than six inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at ten minute intervals for a period of one hour.

c. If six inches of water seeps away in less than ten minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed six inches.

d. The final water level drop shall be used to calculate the percolation rate.

11. Test Procedure for Other Soils Not Meeting the Above Requirements. The hole shall be carefully filled with clear water and a minimum depth of twelve inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil which has sloughed into the hole shall be removed and water shall be adjusted to six inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

c. The hole shall be filled with clear water to a point not more than six inches above the gravel whenever it becomes nearly empty.

d. Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

e. When the first six inches of water seeps away in less than 30 minutes, the time interval between measurements shall be ten minutes, and the test run for one hour.

f. The water depth shall not exceed six inches at any time during the measurement period.

g. The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

12. Calculation of Percolation Rate. The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

13. Using Percolation Rate to Determine Absorption Area. The minimum or slowest percolation rate shall be used in calculating the required absorption area.

R317-4-6. Building Sewer and Distribution Pipe.

6.1. General Requirements. Pipe, pipe fittings, and similar materials comprising building sewers shall comply with the following:

A. They shall be composed of plastic, or other suitable material approved by the Division, and shall conform to the applicable standards as outlined in Tables in this section.

B. The following is a list of solid-wall pipe that has been approved for building sewers.

C. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 4

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	(d) ASTM D-2680 ASTM D-2751 (c) (pressure)
B. Polyvinyl Chloride (PVC) PVC-DWV Schedule 40	ASTM D-2665
PVC - Sewer	ASTM D-3033 ASTM D-3034 (pressure) ASTM F-789

D. The following is a list of solid-wall perforated pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with R317-4-6, and all burrs must be removed from the inside of the pipe. The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE 5

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM D-2661 ASTM D-2751
B. Polyethylene, Smooth Wall (PE)	ASTM D-1248 ASTM D-3350
C. Polyvinyl Chloride (PVC) Schedule 40	(e) ASTM D-2729 ASTM D-2665 (pressure) ASTM D-3033 ASTM D-3034 (pressure)

FOOTNOTES

(a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the International Plumbing Code.

(b) Building sewers include (1) the pipe installed between the building and the septic tank and (2) between the septic tank and the distribution box (or absorption system). The installation of building sewers shall comply with the International Plumbing Code.

(c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(d) For domestic sewage only, free from industrial wastes.

(e) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this

pipe is not approved for building sewer application.

E. Where two different sizes or types of sewer pipes are connected, a proper type of fitting or conversion adapter shall be used.

F. They shall have a minimum inside diameter of four inches. They shall have watertight, root-proof joints and shall not receive any ground water or surface runoff. They shall be laid in straight alignment and on a firm foundation of undisturbed earth or acceptably stabilized earth that is not subject to settling.

G. Building sewers shall be laid on a uniform minimum slope of not less than 1/4-inch per foot (2.08 percent slope). When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4-inch per foot, a building sewer of four inches in diameter or larger may have a slope of not less than 1/8-inch per foot (1.04 percent slope) when approved by the regulatory authority.

H. The lines shall have cleanouts every 100 feet and at all changes in direction or grade, except where manholes are installed every 400 feet and at every change in direction or grade. On four-inch and six-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree ells are not recommended.

I. Building sewers shall be separated from water service pipes in separate trenches and by at least ten feet horizontally except that they may be placed in the same trench when the following three conditions are met:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench.

3. The number of joints in the service pipe shall be kept to a minimum, and the materials and joints of both the sewer and water service pipe shall be of a strength and durability to prevent leakage under adverse conditions.

J. If the water service pipe must cross the building sewer, it shall be at least 18 inches above the latter within ten feet of the crossing. Joints in water service pipes should be located at least ten feet from such crossings.

6.2. Ejector Pumps, Effluent Lift Pumps, and Pump Wells.

A. Ejector pumps discharging into septic tanks shall comply with the International Plumbing Code.

B. When septic tank effluent lift pumps and pump wells are part of an onsite wastewater disposal system, they shall comply with the following:

1. Pumps shall be so placed as to be self-priming, and should operate under positive suction head at all times. A quick disconnect for pumps, such as a union, should be provided between the pump and the line leading to the absorption system. Pumps shall be adequately housed to protect the pump motors from bad weather and protection shall be given to prevent freezing in any portion of the unit. Except for single-family dwellings, pumps shall be installed in duplicate with either pump having adequate capacity to handle maximum flow.

2. Minimum capacity shall be 10 gallons per minute at the necessary discharge head. Pumps shall be capable of passing a 3/4-inch solid sphere and shall have a minimum 2-inch discharge. Suitable shutoff valves shall be placed on suction and discharge lines of each pump and a check valve shall be placed on each discharge line between the shutoff valve and the pump.

3. The pressure line shall be constructed of piping material of a bursting pressure of at least 100 psi and shall be of approved corrosion-resistant material. The pressure line shall be bedded in 3 inches of sand or pea gravel. Pumps may be oil filled submersible pumps or vertically-mounted column pumps. Impellers shall be of cast iron, bronze or other corrosion-resistant material. Level control shall be by a float switch or by other acceptable methods. The pump well shall be constructed of corrosion-resistant material of sufficient strength to withstand the soil pressures related to the depth of the sump, and shall be adequately protected against surface flooding. Capacity of the pump well shall not be less than 50 gallons, and shall be sized to provide between 3 and six pumping cycles per day. Pump wells shall have adequate ventilation and shall be provided with a maintenance access manhole at the ground surface or above and of at least 24-inch diameter with a durable locking-type cover.

4. Power supply should be available from at least 2 independent generating sources, or emergency power equipment should be provided. Where power failure may result in objectionable conditions or unauthorized waste discharge, means for emergency operation shall be provided.

5. Electrical systems and components (i.e. motors, lights, cables, conduits, switch boxes, control circuits, etc.) in sewage pump wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class I, Group D, Division I locations. In addition, equipment located in the pump well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with a watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided in all pumping stations.

R317-4-7. Septic Tanks.

7.1. General Requirements.

A. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces, to provide settling of solids, accumulation of sludge and scum, and be accessible for inspection and cleaning as specified in the following paragraphs:

B. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality.

7.2. Overall Construction and Design Features.

A. Septic tanks may be constructed of the following:

1. Precast reinforced concrete
2. Fiberglass
3. Polyethylene
4. Poured-in-place concrete
5. Material approved by the Division

B. Septic tanks may have single or multiple compartments and may be oval, circular, rectangular, or square in plan, provided the distance between the inlet and outlet of the tank is at least equal to the liquid depth of the tank. In general, the tank length should be at least two to three times the tank width.

C. All septic tanks may have an effluent filter installed at the outlet of the tank. The filter shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The filter should be easily removed for routine servicing through watertight access from the ground surface, or be bypassed with a piping arrangement.

7.3. Plans for Tanks Required.

A. Plans for all septic tanks shall be submitted to the regulatory authority for approval. Such plans shall show all dimensions, capacities, reinforcing, and such other pertinent data as may be required. All septic tanks shall conform to the design drawings and all building shall be done under strict controlled supervision by the manufacturer.

B. Commercial septic tank manufacturers shall submit design plans for each tank model manufactured to the Division for review and approval. The manufacturer shall certify in writing to the Division that the septic tanks to be distributed for use in the State of Utah will comply with this regulation. It is

recommended that such plans also be evaluated by a registered engineer as to surcharge, impact load, and deadload. Any changes in the design of commercially manufactured septic tanks shall be submitted to the Division for approval.

7.4. Tank Capacity for Single-Family Dwellings. The minimum liquid capacity of septic tanks serving single-family dwellings shall be based on the number of bedrooms in each dwelling, in accordance with Table 6.

TABLE 6
Minimum Capacities for Septic Tanks(a)

Number of Bedrooms(b)	Minimum Liquid Capacity(c)(d) (Gallons)
2 or 3	1000
4	1250
For each additional bedroom, add	250

FOOTNOTES

(a) Tanks larger than the minimum required capacity are generally more economical since they do not have to be cleaned as often.

(b) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

(c) The liquid capacity is calculated on the depth from the invert of the outlet pipe to the inside bottom of the tank. A variance of three percent in the required volume may be allowed.

(d) Table 6 provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

7.5. Tank Capacity for Commercial, Institutional, and Recreational Facilities, and Multiple Dwellings.

A. The minimum liquid capacity of septic tanks serving commercial, institutional, and recreational facilities, and multiple dwellings shall be determined on the following basis:

1. For wastewater flows up to 500 gallons per day, the liquid capacity of the tank shall be at least 1,000 gallons.

2. For wastewater flows between 500 and 1,500 gallons per day, the liquid capacity of the tank shall be at least 1.5 times the 24-hour estimated sewage flow (see Table 3).

3. For wastewater flows between 1,500 and 5,000 gallons per day, the liquid capacity of the tank shall equal at least 1,125 gallons plus 75 percent of the daily wastewater flow ($V = 1,125 + 0.75Q$ where V = liquid volume of the tank in gallons, and Q = wastewater discharge in gallons per day).

B. In cases where dwellings or facilities are subject to high peak sewage flows, the liquid capacity of the onsite wastewater system shall be increased as required by the regulatory authority.

7.6. Precast Reinforced Concrete Septic Tanks.

A. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness. The top shall have a minimum thickness of four inches. Such tanks shall have reinforcing of at least six inch x six inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the Division based on an evaluation of acceptable structural engineering data submitted by the manufacturer. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to assure reasonable watertightness. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight. Excessively mortared joints should be trimmed flush. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

B. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply to best acceptable methods as outlined in "Curing Concrete, ACI308-71," by American Concrete Institute, P.O. Box 19150, Detroit, Michigan 84219.

7.7. Fiberglass Septic Tanks.

A. Fiberglass septic tanks shall comply with the criteria for acceptance established in the "Interim Guide Criteria For Glass-Fiber-Reinforced Polyester Septic Tanks", International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032. The identifying seal of the International Association of Plumbing and Mechanical Officials must be permanently embossed in the fiberglass as evidence of compliance. The design requirements in R317-4-7 shall also be met. Other required identity marks must also comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the following installation procedures shall apply:

1. During installation, careful handling of the tank is necessary to prevent damage. Tanks shall not be installed under areas subject to vehicular traffic or heavy equipment.

2. There shall be a minimum of twelve inches of approved, compacted backfill material under the tank as a resting bed. The resting bed must be smooth and level.

3. The hole that the tank is to be installed in shall be large enough to allow a minimum of twelve inches from the ends and sides of the tank to the hole wall.

4. Approved backfill material shall be a naturally-rounded aggregate, clean and free flowing, with a particle size of 3/8-inch or less in diameter. Crushed stone or gravel of the same particle size may be used if naturally-rounded aggregate is not available, but should be washed and free flowing.

5. Backfilling shall be accomplished to the top of the tank in twelve -inch lifts with each layer being well compacted. Sharp tools should not be used near the septic tank. With the manhole cover(s) in place, water should be added to the tank during backfilling. The water level in the tank should coincide approximately with the backfill depth. With the tank full of water, the excavation should be brought to grade with the same approved backfill materials. Depth of backfill over the top of the tank shall not exceed 2-1/2 feet.

7.8. Polyethylene Septic Tanks.

A. Polyethylene septic tanks shall comply with the criteria for acceptance established in "Prefabricated Septic Tanks and Sewage Holding Tanks, Can3-B66-M79" by the Canadian Standards Association, 178 Rexdale Boulevard, Rexdale, Ontario, Canada M9W1R3. Required identifying marks shall comply with this rule.

B. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the Division.

C. The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the installation procedures in R317-4-7 shall apply.

7.9. Poured-In-Place Concrete Septic Tanks. The top of poured-in-place septic tanks with a liquid capacity of 1,000 to 1,250 gallons shall be a minimum of four inches thick, and reinforced with one 3/8-inch reinforcing rod per foot of length, or equivalent. The top of tanks with a liquid capacity of greater than 1,250 gallons up to the maximum design capacity shall be a minimum of six inches thick, and reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. The walls and floor shall be a minimum of six

inches thick. The walls shall be reinforced with 3/8-inch reinforcing rods eight inches on centers both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured. A six-inch water stop shall be used at the wall-floor juncture to insure watertightness. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to insure watertightness. Curing of concrete shall comply with the requirements in R317-4-7.

7.10. Identifying Marks. All prefabricated or precast septic tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the outlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons. Both the inlet and outlet of all such tanks shall be plainly marked as IN or OUT, respectively.

7.11. Liquid Depth of Tanks. Liquid depth of septic tanks shall be at least 30 inches. Depth in excess of 72 inches shall not be considered in calculating liquid volume required in R317-4-7.

7.12. Tank Compartments. Septic tanks may be divided into compartments provided each meets applicable requirements stated herein as well as the following:

A. The volume of the first compartment must equal or exceed two thirds of the total required septic tank volume.

B. No compartment shall have an inside horizontal distance less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is four inches, the cross-sectional area is not less than that of a six -inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40 percent of the liquid depth of the tank.

D. No tank shall have an excess of three compartments.

7.13. Tanks in Series. Additional septic tank capacity over 1,000 gallons may be obtained by joining uncompartmented tanks in series to obtain the required capacity providing the following are complied with:

A. No tank in the series shall be smaller than 1,000 gallons.

B. The capacity of the first tank shall be at least two thirds of the required total septic tank volume.

C. The outlet of each successive tank shall be at least 2 inches lower than the outlet of the preceding tank, and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

D. The number of tanks in series shall not exceed three.

7.14. Inlets and Outlets. Inlets and outlets of tanks or compartments thereof shall meet the material and minimum diameter requirements for building sewers and shall be tee-ed or baffled with the object of diverting incoming flow toward the tank bottom and minimizing as much as possible the discharge of sludge or scum in the effluent. Inlet or outlet devices shall also conform with the following:

A. Inlets and outlets should be located on opposite ends of the tank. The invert of flow line of the inlet shall be located at least two inches (and preferably three inches) above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

B. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming sewage downward. This baffle or tee is to penetrate at least six inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

C. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to approximately 40 percent of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35 percent of the liquid depth.

D. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

E. All inlet and outlet devices shall be permanently fastened in a vertical, rigid position. Inlet and outlet pipe connections to the septic tank shall be sealed with a bonding compound that will adhere to the tank and pipes to form watertight connections, or watertight sealing rings.

F. Inlet and outlet devices shall not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees must extend at least six inches above the liquid level in order to provide scum storage, but no closer than one inch to the inside top of the tank.

G. Offset inlets may be approved by the regulatory authority where they are warranted by constraints on septic tank location.

H. Multiple outlets from septic tanks shall be prohibited.

I. A gas deflector may be added at the outlet of the tank to prevent solids from entering the outlet pipe of the tank.

7.15. Scum Storage. Scum storage volume shall consist of 15 percent or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

7.16. Accessibility of Tank. Septic tanks shall be installed in a location so as to be accessible for servicing and cleaning, and shall have no structure or other obstruction placed over them so as to interfere with such operations. Tanks should be placed between the dwelling and the street whenever possible to facilitate connection to the sanitary sewer at the time such a sewer is installed.

7.17. Access to Tank Interior. Adequate access to the tank shall be provided to facilitate inspection and cleaning and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches, preferably 22 inches, in minimum horizontal dimension or by means of an easily removable lid section.

B. Access to inlet and outlet devices shall be provided through properly spaced openings not less than twelve (12) inches in minimum horizontal dimension or by means of an easily removable lid section.

C. The top of the tank shall be at least six inches below finished grade.

D. All manholes required by R317-4-7 shall be extended to within at least six inches of the finished grade. The manhole extensions shall be constructed of durable, structurally sound materials which are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

E. Access covers for manhole openings shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

F. No septic tank shall be located under paving unless extensions to the access openings are extended up through the paving and the manholes are equipped with a locking-type cover.

7.18. Tank Cover. Septic tank covers shall be sufficiently strong to support whatever load may reasonably be expected to be imposed upon them and tight enough to prevent the entrance of surface water, dirt, or other foreign matter, and seal the

odorous gases of digestion.

7.19. Tank Excavation and Backfill. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole should be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.

7.20. Installation in Ground Water. If septic tanks are installed in ground water, the regulatory authority may require adequate ground anchoring devices to be installed to prevent the tank from floating when it is emptied during cleaning operations.

7.21. Maintenance Requirements. Maintenance Requirements - Adequate maintenance shall be provided for septic tanks to insure their proper function. Recommendations for the inspection and cleaning of septic tanks are provided in R317-4-13.

R317-4-8. Discharge to Absorption Systems.

8.1. General Requirements. Septic tank effluent shall be conducted to the absorption system through a watertight pipe and fittings which meet the material, diameter, and slope requirements for building sewers. Tees, wyes, ells, or other distributing devices may be used as needed. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.2. Tees and Wyes. Tees and wyes shall be installed level to permit equal flow to the branches of the fitting.

8.3. Drop Boxes. On level or sloping topography, drop boxes may be used to distribute effluent within the absorption system. They are usually installed in the middle or at the head end of each trench. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box (except for the last drop box), and l or 2 distribution pipes leading to the absorption system. Drop boxes shall meet the following requirements:

A. The inlet pipe to the drop box shall be at least one inch higher than the outlet pipe leading to the next drop box.

B. The invert of the distribution pipes(s) shall be four to six inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation. Drop boxes shall be installed level and the flow from multiple distribution lines should be checked by filling the drop box with water up to the outlets.

C. The inlet and outlet of the drop box shall be sealed watertight to the sidewalls of the drop box.

D. The drop box shall be provided with a means of access. The top of the drop box shall have a lid of compatible construction and material as the drop box, and be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system. The top of the drop box shall be at least six inches below finished grade.

E. The drop box must be installed on a level, solid foundation to insure against tilting or settling. To minimize frost action and reduce the possibility of movement once installed, drop boxes should be set on a bed of sand or pea gravel at least 12 inches thick.

F. Unused "knock-out" holes in concrete drop boxes shall be completely filled with concrete or mortar.

8.4. Distribution Boxes. Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of concrete or other durable material approved by the Division. They shall be designed to accommodate 1 inlet pipe, the necessary distribution lines, and shall meet the same requirements as for drop boxes, except that outlet inverts of the distribution box shall be not less than 2 inches below the inlet invert. Illustrations of typical components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

8.5. Identifying Marks. Commercially manufactured drop boxes and distribution boxes shall be plainly and legibly marked on an interior wall above the level of the top of the inlet pipe with the name of the manufacturer.

R317-4-9. Absorption Systems.

9.1. General Requirements.

A. Distribution pipe for gravity-flow absorption systems shall be four inches in diameter and shall be perforated. Distribution pipe and pipe fittings shall be of approved materials capable of withstanding corrosive action by sewage and sewage-generated gases, and meeting recognized national standards for compressive strength and corrosive action such as standards published by the American Society for Testing Materials (see R317-4-6).

B. Distribution pipe for gravity-flow absorption systems shall be in straight lengths and penetrated by at least two rows of round holes, each 1/4 to 1/2-inch in diameter, and located at approximately six -inch intervals. When installed on a level or nearly level grade, the perforations should be located at about the five o'clock and seven o'clock positions on the pipe to permit nearly equal drainage along the length of pipe, and the open ends of the pipes shall be capped.

C. Absorption system laterals designed to receive equal flows of wastewater shall have approximately the same absorption area. Many different designs may be used in laying out absorption systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the disposal area.

D. In gravity-flow absorption systems with multiple distribution lines, the sewer pipe from the septic tank shall not be in direct line with any one of the distribution lines, except where drop boxes or distribution boxes are used.

E. Any section of distribution pipe laid with non-perforated pipe, shall not be considered in determining the required absorption area.

F. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris. If it is necessary to walk in the excavation, a temporary board laid on the bottom will prevent damage from excessive compaction. Some smearing damage is likely to occur. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

G. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

H. The top of the stone or "gravel" filter material shall be covered with an effective, pervious, material such as an acceptable synthetic filter fabric, unbacked fiberglass building insulation, a two-inch layer of compacted straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the filter material.

I. Absorption systems shall be backfilled with earth that is free from stones ten inches or more in diameter. The first four to six inches of soil backfill should be hand-filled. Distribution

pipes shall not be crushed or disaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

J. Heavy equipment shall not be driven in or over absorption systems during construction or backfilling.

K. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area, except that deep wall trenches and seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least three feet below the final ground surface.

L. That portion of absorption systems below the top of distribution pipes shall be in natural earth or in earth fill which meets the requirements of R317-4-5.

M. A diversion valve may be installed in the sewer line after the septic tank to allow the use of rotating absorption systems. Such duplicate systems may be allowed in lieu of replacement areas. Total onsite wastewater system requirements shall remain the same. The valve shall be accessible from the finished grade. The valve should be switched annually.

N. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.2. Standard Trenches. Standard trenches consisting of a series of trenches designed to distribute septic tank effluent into perforated pipe and gravel fill, from which it percolates through the trench walls and bottoms into the surrounding subsurface soil, shall conform to the following requirements:

A. The effective absorption area of standard trenches shall be considered as the total bottom area of the excavated trench system in square feet.

B. The minimum required effective absorption area for standard trenches shall be determined from Table 7 by using the results of percolation tests conducted in accordance with R317-4-5. The minimum required effective absorptive area of trenches which utilize chamber systems shall be in accordance with R317-4-9.

C. Isolation of standard trenches shall be not less than the minimum distances specified in Table 2.

D. Design and construction of standard trenches shall be as specified in Tables 8 and 9.

TABLE 7
Subsurface Absorption Systems
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates)(a)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (b)(c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per sq. feet per day (e)(f)(g)
1-10	165	1.6
11-15	190	1.3
16-20	212	1.1
21-30	250	0.9
31-45	300	0.8
46-60(g)	330	0.6

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 7 provide for normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least 2 bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Soil absorption systems are not permitted in areas where the soil percolation rate is slower than one inch in 60 minutes or faster than one inch in one minute.

TABLE 8
Absorption Trench Construction Details(a)

ITEM	UNIT	MINIMUM	MAXIMUM
GRAVITY EFFLUENT DISTRIBUTION PIPES:			
Number of laterals	--	2(b)	--
Length of individual laterals	feet	--	100(c)
Diameter	inches	4	--
Width of trenches	inches	12	36
Slope of distribution pipe	inches/100 ft.	(d)	4
Depth to trench bottom (from ground surface)	inches	10	(e)
Distance between trenches		(see R317-4-9, Table 9)	
Bottom of trench to maximum ground water table	inches	24	--
Bottom of trench to unsuitable soil or bedrock formations	inches	48	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines: 1/2 inch mesh(a) (12.5 millimeter)	percent	0	5
#10 mesh(a) (2.0 millimeter)	percent	0	2
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			
Under distribution pipe	inches	6(f)	--
Over distribution pipe	inches	2	--
Total depth	inches	12	--
Under pipe located within 10 feet of trees and shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6(g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the trenches in square feet.

(b) Of near equal length.

(c) Preferably not more than 60 feet long.

(d) Preferably level.

(e) Trenches should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.

(f) Preferably 8 inches.
(g) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

TABLE 9
Width and Minimum Spacing Requirements
for Absorption Trenches

Width at Bottom in Inches	Minimum Spacing of Trenches (wall to wall) in Feet
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

E. The stone or "gravel" fill used in absorption trenches shall consist of crushed stone, gravel, or similar material, ranging from 3/4 to 2 1/2 inches in diameter. It shall be free from fines, dust, sand, or organic material and shall be durable, and resistant to slaking and dissolution. The maximum fines in the gravel shall be two percent by weight passing through a US Standard #10 mesh (two millimeter) sieve. It shall extend the full width of the trench, shall be not less than six inches deep beneath the bottom of the distribution pipes, and shall completely encase and extend at least 2 inches above the top of the distribution pipe.

F. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

G. In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be interconnected to produce a closed-loop or continuous system and the distribution pipes should be level.

H. In locations where the ground over the absorption system area slopes greater than six inches in any direction within field area, a system of serial distribution trenches may be used which will follow approximately the ground surface contours so that variation in trench depth will be minimized. The trenches should be installed at different elevations, but the bottom of each individual trench should be level throughout its length.

I. Serial trenches shall be connected with a drop box (R317-4-8)or watertight overflow line (R317-4-9) in such a manner that a trench will be filled with wastewater to the depth of the gravel fill before the wastewater flows to the next lower trench.

J. The overflow line between serial trenches shall be a four-inch watertight pipe with direct connections to distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to insure a block of undisturbed earth between trenches. Backfill should be carefully tamped. Inlets should be placed as far as practical from overflows in the same trench.

9.3. Shallow Trenches with Capping Fill. Shallow trenches with capping fill are trenches which meet the requirements of standard trenches except for depth of installation. Shallow trenches with capping fill may be installed to a minimum depth of 10 inches from the natural existing grade to the bottom of the trench. The top of the distribution pipe shall not be installed above the natural existing grade. The gravel fill above the pipe, the filter media barrier, and the soil fill are installed as a "cap" to the trench above grade. Fill shall be installed between trenches to prevent surface ponding and to provide a level finished grade.

9.4 Gravelless Chamber Trench

A. At the option of the local health department or district, gravelless chambers may be used in lieu of the gravel media and perforated effluent pipe in gravity absorption trenches or gravel media when a pressurized distribution pipe system is used, the installation is in conformance with manufacturer recommendations, as modified by these rules.

B. No cracked, weakened, modified or otherwise damaged chamber units shall be used in any installation.

C. All Chamber endplates shall be designed so that the bottom elevation of the effluent inlet pipe is at an equal or higher elevation than the highest elevation of the chamber sidewall louvers.

D. All chambers shall have a splash plate under the inlet pipe or other design feature to avoid unnecessary channeling into trench bottom.

E. An observation port may be placed in each drainfield line to observe the infiltrative surface conditions and ponding levels within the drainfield.

F. All chambers shall meet international Association of Plumbing and Mechanical Officials (IAPMO) standard PS 63-2005, which is hereby incorporated into this rule by reference.

1. Type A Chamber:

a. Shall have a minimum chamber width of 30-inches.

b. Shall be installed in trenches with a maximum excavation width of 36 inches.

2. Type B Chamber:

a. Shall have a minimum chamber width of 22-inches.

b. Shall be installed in trenches with a maximum excavation width of 24 inches.

G. Absorption area shall be calculated using a trench width of 36 inches for Type A Chambers and 24 inches for Type B Chambers. In each case an additional reduction factor may be applied to the calculated absorption area by using a 0.7 multiplier.

9.5. Deep Wall Trenches.

A. Deep wall trenches may be constructed in lieu of other approved absorption systems or as a supplement to an absorption trench where soil conditions and the required separation from the maximum ground water table comply with Table 11 of this section. This absorption system consists of deep trenches filled with clean, coarse filter material which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the following requirements:

1. The effective absorption areas shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the inlet or distributing pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious strata or bedrock formations shall not be considered in determining the effective sidewall absorption area. Each deep wall trench shall have a minimum sidewall absorption depth of 2 feet of suitable soil formation.

2. The minimum required sidewall absorption area shall be determined by either of the following 2 methods:

a. For the purpose of estimating the absorption rate of each deep wall trench system, a signed" Deep Wall Trench Certificate" or equivalent shall be submitted as evidence that a proper soil evaluation has been performed under the supervision of a licensed environmental health scientist, registered engineer, or other qualified person certified by the regulatory authority. The deep wall trench certificate or equivalent must contain the following:

i. the name and address of the individual constructing the deep wall trench;

ii. the location of the property;

iii. the dimensions of the trench;

iv. total effective absorption depth;

v. a description of the texture, character, and thickness of each stratum of soil encountered in the deep wall trench construction;

vi. a signed statement certifying that the deep wall trench has been constructed in accordance with the requirements of this rule. The required absorption area shall then be determined in

accordance with Table 10.

b. Percolation tests conducted in accordance with R317-4-5 shall be made in each soil horizon penetrated by the deep wall trench below the inlet pipe, and test results within the acceptable range specified in R317-4-5 shall be used in calculating the required sidewall absorption area in accordance with Table 7.

TABLE 10
Deep Wall Trench
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater (a)
(Based on Soil Descriptions According to the
United States Department of Agriculture (USDA)
Soil Classification System)

Character of Soil by USDA Soil Classification System		Residential Sq. Ft. of Sidewall Area Required Per Bedroom (b)(c)(d)	Commercial, Institutional, etc. Maximum Rate of Application in Gallons Per Sq. Ft. Sidewall Per Day (e)(f)
Hardpan or bedrock (including fractured bedrock with little or no fines).		(g)	(g)
Sand	Well graded gravels, gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Sand	Poorly graded gravels or gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
Loamy Sand	Well graded sands, gravelly sand, little or no fines.	195	1.20
Loamy Sand	Poorly graded sands or gravelly sands, little or no fines.	195	1.20
Loam	Silty sand, sand-silt mixtures.	295	0.8
Sandy Loam	Silty gravels, poorly graded gravel-sand-silt mixtures.	235	1.0
Silty Loam Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay	Clayey gravels, gravel-sand-clay mixtures.	520 (i)	0.45 (i)
Silty Clay	Clayey sands, sand-clay mixtures.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity.	520 (i)	0.45 (i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	520 (h)(i)	0.45 (h)(i)
Silty Loam, Silt, Sandy Clay Loam Silty Clay Loam Sandy Clay	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	520 (h)(i)	0.45 (h)(i)
Clay Loam, Clay	Inorganic clays of high plasticity, fat clays.	(g)	(g)
Clay Loam, Clay	Organic silts and organic silty clays of low plasticity.	(g)	(g)
Clay Loam, Clay	Organic clays of medium to high plasticity, organic silts.	(g)	(g)
Clay Loam, Clay	Peat and other highly organic silts.	(g)	(g)

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) Minimum absorption requirements in the residential column of Table 10 provide for normal household applications, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedroom times the required absorption area within the applicable soils description category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable soils description category. In every case, a minimum of 150 sq. ft. of sidewall absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 5 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Unsuitable for absorption area.

(h) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(i) For the purposes of this table, whenever there are reasonable doubts regarding the suitability and estimated absorption capacities of soils, percolation tests shall be conducted in those soils in accordance with R317-4-5. Soils within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soil categories, Clay loam and Clay soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

3. Isolation of deep wall trenches shall be not less than the minimum distances specified in Table 2.

4. Design and construction of deep wall trenches shall be as specified in Table 11.

5. The bottom of the deep wall trench shall terminate at least two feet above the maximum ground water table in the disposal area. Suitable soil conditions must be verified to a depth of four feet below the bottom of the proposed deep wall trench.

6. All deep wall trenches shall be filled with coarse stone that ranges from 3/4 to twelve inches in diameter and is free from fines, sand, clay, or organic material.

7. The distribution pipe shall be centered in the deep wall trench and placed the entire length of the trench. A thin layer of crushed rock or gravel ranging from 3/4 to 2 1/2 inches in diameter and free from fines, sand, clay or organic material, shall cover the coarse stone to permit leveling of the distribution pipe. The maximum fines in the gravel used above the stone shall be two percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. The crushed rock or gravel shall completely fill the trench to a minimum depth of two inches over the distribution pipe and shall be properly covered

in accordance with R317-4-9 to prevent infiltration of backfill. A minimum of six inches of backfill shall cover the crushed rock or gravel over the distribution pipe.

TABLE 11
Deep Wall Trench Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
DEEP WALL TRENCHES:			
Width	feet	2	--
Length	feet	--	100 (b)
EFFECTIVE VERTICAL SIDEWALL ABSORPTION DEPTH (per trench)	feet	2	--
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Slope	inches/100 ft.	(c)	4
BOTTOM OF TRENCH TO MAXIMUM GROUND WATER TABLE	inches	24	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	inches	48	--
DISTANCE BETWEEN DEEP WALL TRENCHES	(See Table 2)		
SIZE OF FILTER MATERIAL	inches	3/4	12
DEPTH OF FILTER MATERIAL:			
Under pipe	feet	2 (d)	--
Over pipe	inches	2	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (e)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the deep wall trench (vertical sidewall area) calculated below the distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably not more than 60 feet long.

(c) Preferably level.

(d) For a deep wall trench, the entire trench shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(e) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

8. If multiple deep wall trenches are installed in areas where the slope of the ground is relatively flat, the trenches and distribution pipes should be interconnected to produce a continuous system and the distribution pipe and trench bottoms should be level.

9. In locations where the ground over the deep wall trench area slopes, a single trench system should follow the contours of the land. If multiple trenches are necessary on sloping land, a system of serial deep wall trenches should be used, with each trench installed at a different elevation. The bottom of each trench should be level throughout its length.

10. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

9.6. Seepage Pits. Seepage pits shall be considered as modified deep wall trenches and may be constructed in lieu of other approved absorption systems or as a supplement to an absorption trench where soil conditions and the required separation from the maximum ground water table comply with R317-4-5. This absorption system consists of one or more deep pits, either (1) hollow-lined, or (2) filled with clean, coarse filter material, which receive septic tank effluent and allow it to seep through sidewalls into the adjacent porous subsurface soil. They shall conform to the general requirements for deep wall trenches, except for the following:

A. The effective absorption area for seepage pits shall be determined as for deep wall trenches in R317-4-9, except that each seepage pit shall have a minimum effective sidewall absorption depth of four feet of suitable soil formation.

B. The minimum required sidewall absorption area shall be determined as for deep wall trenches in R317-4-9.

C. Design and construction of seepage pits shall be as specified in Table 12.

TABLE 12
Seepage Pits Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
GENERAL:			
Diameter of pit	feet	3	--
Effective vertical sidewall absorption depth (per pit)	feet	4	--
Distance between seepage pits	(See Table 2)		
Diameter of distribution pipe	inches	4	--
Size of filter material	inches	3/4	12
HOLLOW-LINED PITS:			
Width of annular space between lining and sidewall containing crushed rock (3/4 to 2-1/2 inches in diameter)	inches	6 (b)	--
Thickness of reinforced perforated concrete lining	inches	2-1/2	--
Thickness of brick, or block linings	inches	4	--
Depth of filter material in pit bottom	inches	6	--
Horizontal dimension of manhole in cover	inches	18	--
FILLED SEEPAGE PITS:			
Depth of filter material:			
Under distribution pipe	feet	4 (c)	--
Over distribution pipe	inches	2	--
Thickness of compacted straw barrier over aggregate filter material	inches	2	--
Depth of backfill over barrier covering filter material	inches	6 (d)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the outside surface of the seepage pit (vertical sidewall area) calculated below the inlet or distribution pipe, exclusive of any unsuitable soil or bedrock formations. The bottom area and any highly restrictive or impervious sidewall strata shall not be considered in determining the effective absorption area.

(b) Preferably twelve inches.

(c) For a filled seepage pit, the entire pit shall be completely filled with aggregate filter material to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

(d) Whenever any distribution pipes will be covered with between six and 12 inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

D. All seepage pits shall have a diameter of at least three feet.

E. Structural materials used throughout shall assure a durable, safe structure.

F. All seepage pits shall be either (1) hollow and lined with an acceptable material, or (2) filled with coarse stone or similar material that ranges from 3/4 to 12 inches in diameter and is free from fines, sand, clay, or organic material. Pits filled with coarse stone are preferred over hollow-lined pits. Linings of brick, stone, block, or similar materials shall have a minimum thickness of four inches and shall be laid with overlapping, tight-butted joints. Below the inlet level, mortar shall be used in the horizontal joints only. Above the inlet, all joints shall be fully mortared.

G. For hollow-lined pits, the inlet pipe should extend horizontally at least 1 foot into the pit with a tee to divert flow downward and prevent washing and eroding the sidewall. A minimum annular space of six inches between the lining and excavation wall shall be filled with crushed rock or gravel varying in diameter from 3/4 to 2-1/2 inches and free from fines, sand, clay, or organic material. The maximum fines in the gravel shall be 2 percent by weight passing through a US Standard #10 mesh (2.0 millimeter) sieve. Clean coarse gravel or rock at least six inches deep shall be placed in the bottom of each pit.

H. A structurally sound and otherwise suitable top shall be provided that will prevent entrance of surface water, dirt, or other foreign material, and be capable of supporting the overburden of earth and any reasonable load to which it is subjected. Access to each hollow-lined pit shall be provided by means of a manhole, not less than 18 inches in minimum horizontal dimension, or by means of an easily removable cover and shall otherwise comply with R317-4-7. The top of the pit shall be covered with a minimum of six inches of backfill.

I. In pits filled with coarse stone, the perforated distribution pipe shall run across each pit. A layer of crushed rock or gravel shall be used for leveling the distribution pipe as specified in R317-4-9.

9.7. Absorption Beds. Absorption beds consist of large excavated areas, usually rectangular, provided with "gravel" filter material in which 2 or more distribution pipe lines are laid. They may be used in lieu of other approved absorption systems where conditions justify their use and shall conform to the requirements applying to absorption trenches, except for the following:

A. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavation.

B. The minimum required absorption area for absorption beds shall be determined from Table 13 by using the results of percolation tests conducted in accordance with R317-4-5.

TABLE 13
Absorption Bed
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater
(Based on Percolation Test Rates) (a) (b)

Percolation Rate (time in minutes required for water to fall 1 inch)	Residential Minimum Absorption Area in Square Feet Per Bedroom (c)(d)	Commercial, Institutional, etc., Maximum Rate of Application in gallons per square foot per day (e)(f)
1-10 (g)	330	0.80
11-15	380	0.65
16-20	424	0.55
21-30 (g)	500	0.45

FOOTNOTES

(a) Where practical, absorption areas should be increased above minimum figures specified in these rules.

(b) This table provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

(c) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms.

(d) Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category. In every case, sufficient absorption area shall be provided for at least two bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day (Table 3) divided by the maximum rate of application in gallons per sq. ft. per day within the applicable percolation rate category. In every case, a minimum of 300 square feet of absorption bed bottom absorption area shall be provided.

(f) Minimum application rates in the commercial and institutional column of Table 7 do not include wastes from garbage grinders and automatic sequence washing machines. Discharge from these appliances to a commercial or institutional absorption system require additional capacity of 20 percent for garbage grinders and 40 percent for automatic sequence washers above the minimum calculated absorption values. If both these appliances are installed, the absorption area must be increased by at least 60 percent above the minimum calculated absorption value.

(g) Absorption beds are not permitted in areas where the soil percolation rate is slower than one inch in 30 minutes or faster than one inch in one minute.

C. Isolation of absorption beds shall be not less than the minimum distances specified in Table 2.

D. Design and construction of absorption beds shall be as specified in Table 14.

TABLE 14
Absorption Bed Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
EFFLUENT DISTRIBUTION PIPES:			
Diameter	inches	4	--
Length	feet	--	100 (b)
Number of lines	--	2 (c)	--
Slope	inches/100 ft.	(d)	4
Depth of absorption bed (from ground surface)	inches	12	(e)
DISTANCE BETWEEN MULTIPLE LINES (c to c)	feet	--	6
DISTANCE BETWEEN DISTRIBUTION LINES AND SIDEWALLS (edge to edge)	feet	1	3
DISTANCE BETWEEN ABSORPTION BEDS	(See Table 2)		
BOTTOM OF BED TO MAXIMUM GROUND WATER TABLE	feet	2	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	feet	4	--
SIZE OF FILTER MATERIAL	inches	3/4	2-1/2
Allowable fines: 1/2 inch mesh(a) (12.5 millimeter)	percent	0	5
#10 mesh(a) (2.0 millimeter)	percent	0	2
(a) US Standard Sieves			
DEPTH OF FILTER MATERIAL:			
Under pipe	inches	6 (f)	--
Over pipe	inches	2	--
Total	inches	12	--
Under pipe located within 10 feet of trees or shrubs	inches	12	--
THICKNESS OF COMPACTED STRAW BARRIER OVER AGGREGATE FILTER MATERIAL	inches	2	--
DEPTH OF BACKFILL OVER BARRIER COVERING FILTER MATERIAL	inches	6 (g)	--

FOOTNOTES

(a) The effective absorption area shall be considered as the total bottom area of the excavation in square feet.

(b) Preferably not more than 60 feet long.

(c) Of near equal length.

(d) Preferably level.

(e) Absorption beds should be constructed as shallow as is practical to allow for evapotranspiration of wastewater.
(f) Preferably eight inches.
(g) Whenever any distribution pipes will be covered with between six and twelve inches of backfill, they shall be laid level, and adequate precautions shall be made to prohibit traffic or heavy equipment from the disposal area.

E. Absorption beds should be installed where the slope of the ground surface is relatively level, sloping no more than about six inches from the highest to the lowest point in the installation area. The bottom of the entire absorption bed shall be essentially level, at the same elevation, and the distribution pipes shall be interconnected to produce a continuous system.

R317-4-10. Experimental Onsite Wastewater Systems.

10.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and disposal may be employed provided they are acceptable to the Division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the Division shall not be restricted by this rule provided that:

1. The experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment.

2. The proposal for an experimental onsite wastewater system must be in the name of and bear the signature of the person who will own the system.

3. The person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the Division may designate them as approved alternative onsite wastewater systems. Following this approval of alternative onsite wastewater systems, the Division will adopt rules governing their use.

10.2. General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as shown in R317-4-5.

2. The local health department must advise the owner of the system of the experimental status of that type of system. The advisory must contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements which are all specific to the type of system to be installed.

3. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations must be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded on the deed of ownership for that property.

R317-4-11. Alternative Systems.

11.1. General Requirements.

A. The health department will review and approve sufficient design, installation and operating information to produce a successful, properly operating installation from a designer certified at Level 3 in accordance with the requirements of R317-11.

B. The designer must submit:

1. detailed basis of design of all components with necessary and relevant calculations; and,

2. operation and maintenance instructions for the system to the health department and to the owner which describe the activities necessary to properly operate and maintain and troubleshoot the system.

C. All requirements stated elsewhere in this rule for design, construction and installation details, performance, failures, repairs and abandonment shall apply unless stated differently for a given alternative system.

11.2. At-Grade Systems.

A. Design Requirements.

1. Absorption trenches and absorption bed type absorption systems may be placed in the at-grade position provided:

a. Top of effluent distribution pipe or the bottom of the absorption trench is placed at the native ground surface.

b. the elevation of the anticipated maximum ground water table shall be:

i. at least 24 inches below the bottom of the absorption system excavation; and,

ii. at least 48 inches below finished grade.

c. at least 48 inches of suitable soil percolating between:

i. one and 60 minutes per inch for absorption trench, or,

ii. one to 30 minutes per inch for absorption beds is available between bedrock or impervious strata and the bottom of the absorption system excavation.

d. The native ground surface does not slope more than four percent for installation of an at-grade system.

e. all other requirements of this rule for:

i. minimum horizontal distances from the stated feature to the toe of the finished at-grade system in Table 2,

ii. area requirements and construction details for absorption trenches in Tables 7, 8 and 9,

iii. area requirements and construction details for absorption beds in Tables 13 and 14, are met.

2. Minimum of two observation ports shall be provided within absorption area.

B. Construction Details.

1. The site shall be cleared of vegetation.

2. The soil at the surface shall be loosened and broken up to an approximate depth of six inches.

3. No tilling shall be permitted.

4. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

5. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope.

6. The site shall be graded such that surface water drains away from the onsite wastewater system and adjoining area.

7. The maximum side slope for above ground fill shall be four (horizontal) to one (vertical).

11.3 Earth fill systems.

A. Design Requirements.

1. Earth fill may be added to a site or naturally existing soil with a percolation rate less than one minute per inch or more than 60 minutes per inch may be removed and replaced with earth fill with an acceptable, in-place percolation rate, if:

2. the removal of the original soil does not cause other

unacceptable site conditions, and, wastewater ponding will not occur below the bottom of the absorption system;

3. the elevation of the anticipated maximum ground water table shall be:

a. at least 12 inches below the natural ground surface, and,

b. at least 24 inches below the bottom of the absorption trench.

4. Minimum depth of suitable soil percolating between one and 60 minutes per inch available between bedrock or impervious strata and:

a. the native ground surface must not be less than 36 inches, or,

b. the bottom of the absorption system trench must not be less than 48 inches, which ever is greater.

5. all other requirements of this rule for:

a. minimum horizontal distances in Table 2,

b. area requirements and construction details for absorption trenches in Tables 7, 8 and 9, are met.

6. The fill area shall be sufficient to:

a. accommodate an absorption system for a home with a minimum of three bedrooms, and shall include all required clearances within, and outside of the fill and absorption system area.

b. install a system sized for greater of three bedrooms or the planned number of bedrooms in the home, using the percolation rate of 60 minutes per inch.

c. include the area required for a 100 percent replacement of the absorption system, with all required clearances.

7. The area between trenches shall not be used for replacement area.

8. The earth fill shall be considered to be acceptably stabilized if it is allowed to naturally settle for a minimum period of one year, sized to result in its minimum required dimensions after the settling period. Mechanical compaction shall not be allowed.

9. After the fill has settled for a minimum of one year, a minimum of two (2) percolation tests/soil exploration tests shall be conducted in the fill. One shall be conducted in the proposed absorption system area and one in the proposed replacement area of the fill. The suitably stabilized fill shall have an in-place percolation rate of between 15 and 45 minutes per inch.

10. The native ground surface does not slope more than four percent for installation of an earth fill system.

11. The fill depth below the bottom of the absorption system to the native ground surface shall not exceed six feet.

12. Minimum of two observation ports shall be provided within absorption area.

B. Construction Details.

1. The site shall be cleared of vegetation.

2. The surface soil shall be loosened and broken up to an approximate depth of six inches.

3. No rotary tilling shall be permitted.

4. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

5. The site shall be graded such that surface water drains away from the onsite wastewater system and adjoining area.

6. The maximum exposed side slope for fill surfaces shall be four horizontal to one vertical.

7. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the wastewater system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal area perimeter below, before the beginning of the side slope.

8. A suitable soil cap, which will support a vegetative cover, shall cover the entire fill body. The cap shall be provided with a vegetative cover. Access to the fill site shall be restricted to minimize erosion and other physical damage.

11.4 Mound systems.

A. Design Requirements.

1. The design shall generally be based on the "Wisconsin Mound Soil Absorption System: Siting, Design and Construction Manual, January 2000" published by the University of Wisconsin-Madison Small-Scale Waste Management Project, with the following exceptions:

2. Mound system may be built over naturally existing soils with a percolation rates between one to 60 minutes per inch provided:

a. the minimum separation distance between the anticipated maximum ground water table and the natural ground surface shall be 12 inches.

b. a minimum of one foot of mound fill and one foot of natural soil percolating between one to 60 minutes per inch is available to form the minimum two feet of unsaturated soil below the bottom of the absorption system.

c. at least 36 inches of suitable soil percolating between one and 60 minutes per inch is available between bedrock or impervious strata and the native ground surface.

d. The native ground surface does not slope more than 25 percent for installation of a mound system.

3. all other requirements of this rule for minimum horizontal distances in Table 2, are met.

4. The effluent loading rate at the sand fill to native soil interface shall be as specified as shown in Table 15:

Table 15
Effluent loading rates
from sand fill to native soil interface
(Based on Percolation Test Rates)

Percolation Rate (time in minutes required for water to fall one inch)	gallons per day per square foot
1-10	0.45
11-15	0.40
16-20	0.35
21-30	0.30
31-45	0.25
46-60	0.20

B. Construction Details.

1. The site shall be cleared of vegetation and scarified to an approximate depth of six inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

2. The surface soil shall be loosened and broken up to an approximate depth of six inches.

3. The site shall be graded such that surface water drains away from the onsite wastewater system and adjoining area.

4. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of six inches below the distribution pipe, the diameter of the distribution pipe and two inches above the distribution pipe or ten inches, whichever is larger.

5. The material for soil cap shall not be less than six inches in thickness and provide protection against erosion, frost, storm water infiltration and support vegetative growth and aeration of distribution cell.

6. Fill material must meet ASTM Specification C-33 for fine aggregate. Textural analysis of fill material in accordance with ASTM C-136 is required for determining suitability.

7. A minimum of two observation pipes shall be located at 1/5 to 1/10 of the length of the distribution cell from each end of the distribution cell along the center of distribution cell width.

8. An automatic visual or audible alarm indicating the failure of the pump shall be provided, and shall remain on until turned off manually.

11.5. Packed Bed Media systems.

A. Design Requirements.

1. Packed bed media systems may be used provided:

a. the elevation of the anticipated maximum ground water

table shall be at least 12 inches below the natural ground surface, or the bottom of absorption trench or bed or drip irrigation piping, whichever is greater.

b. acceptable percolation rate for packed bed media system effluent dispersal is up to 120 minutes per inch.

c. at least 36 inches of suitable soil below the bottom of the absorption trench, percolating between one and 120 minutes per inch is available for packed bed media system effluent dispersal, between bedrock or impervious strata and the native ground surface.

d. At least 18 inches of suitable soil below the bottom of the absorption trench percolating between one and 120 minutes per inch is available for packed bed media system effluent dispersal, between bedrock or impervious strata and the native ground surface based on an evaluation of infiltration rate and hydrogeology from a professional geologist or engineer that is certified at the appropriate level to perform onsite system design and having sufficient experience and expertise to practice in Utah with expertise in geotechnical engineering based on:

i. type, extent of fractures, presence of bedding planes, angle of dip,

ii. hydrogeology of surrounding area, and,

iii. cumulative effect of all existing and future systems within the area for any localized mounding or surfacing which may create a public health hazard or nuisance, description of methods used to determine infiltration rate and evaluation of surfacing or mounding conditions.

e. all other requirements of this rule for:

i. installation of absorption trenches in sloping ground, and,

ii. minimum horizontal distances in Table 2, except for watercourse, lake, pond, reservoir, non-culinary spring, foundation drain, curtain drain or grouted well which require a minimum of 50 feet of separation from absorption trench are met.

2. The design shall be based on:

a. a minimum of 300 gallons per day for two bedrooms and 100 gallons per day for each additional bedroom.

b. Intermittent Sand Filter System:

i. Media

(1). Depth - Minimum 24 inches of washed sand

(2). Effective size - 0.35 to 0.5 millimeter

(3). Uniformity Coefficient - less than 4.0

(4). Maximum Passing through #200 Sieve - one percent

ii. Maximum Application rate - 1.2 gallons per day per square foot of media surface area

iii. Maximum dose volume through any given orifice for each dosing is two gallons

c. Re-circulating Sand Filter System:

i. Media

(1). Depth - Minimum 24 inches of washed sand

(2). Effective size - 1.5 to 2.5 millimeter

(3). Uniformity Coefficient - 1.0 to 3.0

(4). Maximum Passing through #50 Sieve - one percent

ii. Maximum Application rate - 5.0 gallons per day per square foot of media surface area

iii. Maximum dose volume through any given orifice for each dosing is two gallons

d. Re-circulating Gravel Filter System:

i. Media

(1). Depth - Minimum 36 inches of washed gravel

(2). Effective size - 1.5 to 5.0 millimeter

(3). Uniformity Coefficient - less than 2.0

(4). Maximum Passing through #16 Sieve - one percent

ii. Maximum Application rate - 5.0 gallons per day per square foot of media surface area

iii. Maximum dose volume through any given orifice for each dosing is two gallons

e. Textile Filter System:

i. Media

(1). Geotextile, AdvanTex or approved equal

ii. Maximum Application rate - 30.0 gallons per day per square foot of media surface area

iii. Maximum dose volume through any given orifice for each dosing is two gallons

f. Peat Filter:

i. Media

(1). Depth - Minimum 24 inches of peat media

(2). Effective size - 0.25 to 2.0 millimeter

ii. Maximum Application rate - 5 gallons per day per square foot of media

iii. Maximum dose volume through any given orifice for each dosing is two gallons.

3. The filter bed must be pressure dosed. Orifices or nozzles shall be of such size that the difference in discharge between the first orifice or nozzle and the last orifice or nozzle in each lateral is less than ten percent. The lateral ends must be equipped with fittings and or enclosures to allow cleaning and servicing from the surface.

4. Recirculation Tank Design:

a. Recirculation tank capacity shall be equal to:

i. at least design flow for one day, or,

ii. other volume supported by the basis of design and operation.

b. design shall include dosing rate, operating, surge and reserve capacities.

c. The recirculation ratio should be adjusted, as necessary during operation and maintenance inspections based on recorded wastewater flow rates; ranging from 3:1 to 7:1.

d. Access to the tanks shall seal odorous gases, be watertight and extend to the finished grade.

5. Outlet of septic tanks upstream of packed bed media shall be fitted with effluent filter.

6. Pumping Equipment and Controls:

a. The system shall be equipped with a programmable control panel. The controls shall be capable of controlling all functions incorporated or required in the design of the system. All system control panels must be equipped with an automatic visual or audible alarm indicating the failure of the pump, and shall remain on until turned off manually.

b. The control panel must include a pump run-time hour meter and a pump event counter or other acceptable flow measurement method.

c. The control panel must be installed within sight of the access risers.

d. The control panel must be rated for exterior use. The enclosure must be rated for NEMA 4X or better.

e. The pumps shall be capable of delivering the design flow at the calculated total dynamic head for the proposed system. Supporting hydraulic calculations and pump curve analysis must be submitted to the health department with the design.

f. The pump selected must be rated for the number of cycles anticipated at peak flow conditions.

7. Packed bed system media effluent shall be distributed by gravity or under pressure in an absorption trench designed:

a. in accordance with Table 7 of this rule for soils percolating between one to 60 minutes per inch; or,

b. Using the equation:

i. $q = 2.1687 \times t^{(-0.3806)}$ where t is the percolation rate in minutes per inch, and q is in gallons per day per square foot, for absorption trenches or, $q = 1.0414 \times t^{(-0.3603)}$ where t is the percolation rate in minutes per inch up to 30 minutes per inch, and q is in gallons per day per square foot, for absorption beds or,

ii. Area in square feet per bedroom = $69.16 \times t^{(0.3806)}$ where t is the percolation rate in minutes per inch for absorption trenches or, area in square feet per bedroom = $144.04 \times t^{(0.3603)}$

where t is the percolation rate in minutes per inch up to 30 minutes per inch, for absorption beds.

c. Dispersal area may be reduced by multiplying the area reduction factor shown in Table 16:

Table 16
Area Reduction Factors

System	Factor
Intermittent Sand Filter	0.85
Re-circulating Sand Filter	0.80
Re-circulating Gravel Filter	0.80
Textile Filters	0.75
Peat Filters	0.80

d. Drip irrigation system may be used for packed bed media system effluent disposal based on type of soil and drip irrigation manufacturer's recommendations.

e. Minimum of two observation ports shall be provided within absorption area.

8. Performance of Packed Bed Media Systems

a. Packed bed media system performance shall be monitored at an interval not exceeding six calendar months for surfacing in absorption trench area, odors around filter systems, equipment malfunction, and effluent quality of a grab sample, before discharge to absorption trench, bed or drip irrigation system, showing no more than 20 nephelometric turbidity units (NTU), or five-day total carbonaceous biochemical oxygen demand and total suspended solids concentration of no more than 25 milligrams per liter.

b. Effluent turbidity exceeding 20 NTU shall be followed up with two successive week testing within a 30-day period from the first exceedance. When two successive effluent testing shows results in excess of 20 NTU, the system shall be deemed to be non-compliant requiring further evaluation with five-day total carbonaceous biochemical oxygen demand and total suspended solids concentrations, and a corrective action plan.

c. Corrective action is required where the effluent quality does not meet the minimum standard for more than 30 days.

d. For non-complying systems, the health department shall require and order:

i. all necessary steps such as maintenance servicing, repairs, and/or replacement of system components to correct malfunctioning or non-compliant system;

ii. effluent quality testing for turbidity, five-day total or carbonaceous biochemical oxygen demand, and suspended solids shall continue every two weeks until three successive samples are found to be in compliance;

iii. payment of fees for additional inspections, reviews and testing;

iv. evaluation of the system design including non-approved changes to the system, and the wastewater flow volume, the biological and or chemical loading to the system;

v. investigation of household practices related to the discharge of chemicals into the system, such as photo-finishing chemicals, laboratory chemicals, excessive amount of cleaners or detergents, etc.; and,

vi. additional tests or samples to troubleshoot the system malfunction.

B. Construction Details

i. The site shall be graded such that surface water drains away from the onsite wastewater system and adjoining area.

R317-4-12. Design, Installation, and Maintenance of Sewage Holding Tanks.

12.1. Sewage Holding Tanks - Administrative Requirements.

A. Sewage holding tanks are permitted only under the following conditions:

1. Where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable; or,

2. As a temporary (not to exceed one year) wastewater system for a new dwelling until a connection is made to an approved sewage collection system; or,

3. For other essential and unusual situations where both the Division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner which provides long-term protection of the waters of the state. Requests for the use of sewage holding tanks in this instance must receive the written approval of both agencies prior to the installation of such devices.

B. Requests for the use of sewage holding tanks must receive the written approval of the local health department prior to the installation of such devices.

C. Except on those lots recorded and approved for sewage holding tanks prior to May 21, 1984, sewage holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the Division and the local health department having jurisdiction.

12.2. General Requirements. The design, installation, and maintenance of all sewage holding tanks, except those for recreational and liquid waste pumper vehicles, must comply with the following:

A. No sewage holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement must be submitted by the owner indicating that in the event his sewage holding tank is approved, he will enter into a contract with an acceptable liquid waste pumping company, or make other arrangements meeting the approval of the regulatory authority having jurisdiction, that the tank will be pumped periodically, at regular intervals or as needed, and that the wastewater contents will be disposed of in a manner and at a facility meeting approval of those regulatory authorities.

C. If authorization is necessary for disposal of sewage at certain facilities, evidence of such authorization must be submitted for review.

12.3. Basic Plan Information Required. Plan information for each sewage holding tank, except those in recreational and liquid waste pumper vehicles, shall comply with the following criteria:

A. Location or complete address of dwelling to be served by sewage holding tank and the name, current address, and telephone number of the person who will own the proposed sewage holding tank.

B. A plot or site plan showing:

1. direction of north,
2. number of bedrooms,
3. location and liquid capacity of sewage holding tank,
4. source and location of domestic water supply,
5. location of water service line and building sewer, and
6. location of streams, ditches, watercourses, ponds, etc., near property.

C. Plan detail of sewage holding tank and high sewage level warning device.

D. Relative elevations of:

1. building floor drain,
2. building sewer,
3. invert of inlet for tank,
4. lowest plumbing fixture or drain in building served, and
5. the maximum liquid level of the tank.

E. Statement indicating the present and maximum anticipated ground water table.

F. Liquid waste pumping arrangements for sewage holding tank.

12.4. Construction.

A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All sewage holding tanks shall comply with the manufacturing materials and construction requirements specified for septic tanks.

B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water. All prefabricated or precast sewage holding tanks which are commercially manufactured shall be plainly, legibly, and permanently marked or stamped on the exterior at the inlet end and within six inches of the top of the wall, with the name and address or nationally registered trademark of the manufacturer and the liquid capacity of the tank in gallons.

C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

D. A high water warning device shall be installed on each tank to indicate when it is within 75 percent of being full. This device shall be either an audible or a visual alarm. If the latter, it shall be conspicuously mounted. All wiring and mechanical parts of such devices shall be corrosion resistant and all conduit passage ways through the tank top or walls shall be water and vapor tight.

E. No overflow, vent, or other opening shall be provided in the tank other than those described above.

F. The regulatory authority may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

G. The slope of the building sewer shall comply with R317-4-6.

12.5. Capacity. Each tank shall be large enough to hold a minimum of seven days sewage flow or 1,000 gallons, whichever is larger. The liquid capacity of the sewage holding tank should be based on sewage flows for the type of dwelling or facility being served (Table 3) and on the desired time period between each pumping. The length of time between pumpings may be increased by careful water management, low volume plumbing fixtures, etc.

12.6. Location. Sewage holding tanks must be located:

A. In an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use.

B. In accordance with the requirements for septic tanks as specified in Table 2.

C. Where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.

12.7. Operation and Maintenance.

A. Sewage holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.

B. Sewage holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

C. A record of pumping dates, amounts pumped, and ultimate disposal sites should be maintained by the owner and made available to the appropriate regulatory authorities upon request.

D. Sewage holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the local health authority. Repairs or replacements shall be conducted under the direction of the local health authority. Major increases in the time of pumpings without significant changes in water usage could indicate leakage of the tanks.

E. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.

R317-4-13. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

13.1. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

A. Septic tanks must be cleaned before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

B. A septic tank which receives normal loading should be inspected at yearly intervals to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require cleaning every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be cleaned. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections. Scum and sludge accumulations can be measured as follows:

1. Scum can be measured with a long stick to which a weighted flap has been hinged, or any device that can be used to determine the bottom of the scum mat. The stick is forced through the mat, the hinged flap falls into a horizontal position, and the stick is lifted until resistance from the bottom of the scum is felt. With the same tool, the distance to the bottom of the outlet device (baffle or tee) can be found.

2. Sludge can be measured with a long stick wrapped with rough, white toweling and lowered into the bottom of the tank. The stick should be small enough in diameter so it can be lowered through the outlet device (baffle or tee) to avoid scum particles. After several minutes, if the stick is carefully removed, the height to which the solids (sludge) have built up can be distinguished by black particles clinging to the toweling.

C. The tank should be pumped out if either the bottom of the floating scum mat is within three inches of the bottom of the outlet device (baffle or tee) or the sludge level has built up to approximately 12 inches from the bottom of the outlet device (baffle or tee). Little long-term benefit is derived by pumping out only the liquid waste in septic tanks. All three wastewater components, scum, sludge, and liquid waste should be removed. Tanks should not be washed or disinfected after pumping. A small amount of sludge should be left in the tank for seeding purposes.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to insure that each tank or compartment is inspected and cleaned. Hollow-lined seepage pits may require cleaning on some occasions.

E. Professional septic tank cleaners, with tank trucks and pumping equipment, are located in most large communities and can be hired to perform cleaning service. In any case, the septic

tank wastes contain disease causing organisms and must be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with State rules.

F. The digestion of sewage solids gives off explosive, asphyxiating gases. Therefore, extreme caution should be observed if entering a tank for cleaning, inspection, or maintenance. Forced ventilation or oxygen masks and a safety harness should be used.

G. Immediate replacement of broken-off inlet or outlet fittings in the septic tank is essential for effective operation of the system. On occasion, paper and solids become compacted in the vertical leg of an inlet sanitary tee. Corrective measures include providing a nonplugging sanitary tee of wide sweep design or a baffle.

H. Following septic tank cleaning, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light. Distribution boxes, if provided, should be inspected and cleaned when the septic tank is cleaned.

I. A written record of all cleaning and maintenance to the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants or other chemicals; therefore, use of these materials is not recommended.

K. Waste brine from household water softening units, soaps, detergents, bleaches, drain cleaners, and other similar materials, as normally used in a home or small commercial establishment, will have no appreciable adverse effect on the system. If the septic tank is adequately sized as herein required, the dilution factor available will be sufficient to overcome any harmful effects that might otherwise occur. The advice of your local health department and other responsible officials should be sought before chemicals arising from a hobby or home industry are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks which can add substantial amounts of water to the system. Industrial wastes, and other liquids that may adversely affect the operation of the onsite wastewater disposal system should not be discharged into such a system. Paper towels, facial tissue, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

M. Crushed, broken, or plugged distribution pipes should be replaced immediately.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
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R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-600. Illegal Drug Operations Decontamination Standards.
R392-600-1. Authority and Purpose.

(1) This rule is authorized under Section 19-6-906.

(2) This rule sets decontamination and sampling standards and best management practices for the inspection and decontamination of property contaminated by illegal drug operations.

R392-600-2. Definitions.

The following definitions apply in this rule:

(1) "Background concentration" means the level of a contaminant in soil, groundwater or other media up gradient from a facility, practice or activity that has not been affected by the facility, practice or activity; or other facility, practice or activity.

(2) "Decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has a currently valid certificate issued by the Solid and Hazardous Waste Control Board, as defined under Utah Code Subsection 19-6-906(2).

(3) "Chain-of-custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.

(4) "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.

(5) "Combustible" means vapor concentration from a liquid that has a flash point greater than 100 degrees F.

(6) "Confirmation sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in this rule.

(7) "Contaminant" means a hazardous material.

(8) "Contamination" or "contaminated" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards.

(9) "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride,perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, thionyl chloride or any other substance that increases or decreases the pH of a material and may cause degradation of the material.

(10) "Decontamination" means treatment or removal of contamination by a decontamination specialist or owner of record to reduce concentrations of contaminants below the decontamination standards.

(11) "Decontamination standards" means the levels or concentrations of contaminants that must be met to demonstrate that contamination is not present or that decontamination has successfully removed the contamination.

(12) "Delineate" means to determine the nature and extent of contamination by sampling, testing, or investigating.

(13) "Easily cleanable" means an object and its surface that can be cleaned by detergent solution applied to its surface in a way that would reasonably be expected to remove dirt from the object when rinsed and to be able to do so without damaging the object or its surface finish.

(14) "Ecstasy" means 3,4-methylenedioxy-methamphetamine (MDMA).

(15) "EPA" means the United States Environmental Protection Agency.

(16) "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector.

(17) "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma.

(18) "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by gas chromatograph/mass spectrometer.

(19) "FID" means flame ionization detector.

(20) "Flammable" means vapor concentration from a liquid that has a flash point less than 100 degree F.

(21) "Grab Sample" means one sample collected from a single, defined area or media at a given time and location.

(22) "Hazardous materials" has the same meaning as "hazardous or dangerous materials" as defined in Section 58-37d-3; and includes any illegally manufactured controlled substances.

(23) "Hazardous waste" means toxic materials to be discarded as directed in 40 CFR 261.3.

(24) "HEPA" means high-efficiency particulate air and indicates the efficiency of an air filter or air filtration system.

(25) "Highly suggestive of contamination" means the presence of visible or olfactory signs indicative of contamination, locations in and around where illegal drug production occurred, where hazardous materials were stored or suspected of being used to manufacture illegal drugs, or areas that tested positive for contamination or other portions of the property that may be linked to processing and storage areas by way of the ventilation system or other activity that may cause contamination to be distributed across the property.

(26) "Impacted groundwater" means water present beneath ground surface that contains concentrations of a contaminant above the UGWQS.

(27) "Impacted soil" means soil that contains concentrations of a contaminant above background or EPA residential Risk Based Screening Concentrations as contained in the document listed in R392-600-8.

(28) "LEL/O2" means lower explosive limit/oxygen.

(29) "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.

(30) "Non-porous" means resistant to penetration of liquids, gases, powders and includes non-permeable substance or materials, that are sealed such as, concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.

(31) "Not Highly Suggestive of Contamination" means areas outside of the main locations(s) where illegal drugs were produced and hazardous materials were stored or suspected of being used that do not reveal obvious visual or olfactory signs of contamination, but may, however, be contaminated by residue from the manufacture or storage of illegal drugs or hazardous materials.

(32) "Owner of record" means (a) The owner of property as shown on the records of the county recorder in the county where the property is located; and (b) may include an individual, financial institution, company, corporation, or other entity.

(33) "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as facemasks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.

(34) "PID" means photo ionization detector.

(35) "Porous" means material easily penetrated or permeated by gases, liquids, or powders such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiber-board ceiling panels, cork paneling, blankets, towels, clothing, and cardboard or any other material that is worn or not properly sealed.

(36) "Preliminary assessment" means an evaluation of a property to define all areas that are highly suggestive of contamination and delineate the extent of contamination. The preliminary assessment consists of an on-site evaluation conducted by the decontamination specialist or owner of record to gather information to demonstrate that contamination is not present above the decontamination standards or to enable development of a workplan outlining the most appropriate method to decontaminate the property.

(37) "Properly disposed" means to discard at a licensed facility in accordance with all applicable laws and not reused or sold.

(38) "Property" means: (a) any property, site, structure, part of a structure, or the grounds, surrounding a structure; and (b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(39) "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.

(40) "Sample location" means the actual place where an environmental sample was obtained, including designation of the room, the surface (wall, ceiling, appliance, etc), and the direction and distance from a specified fixed point (corner, door, light switch, etc).

(41) "Services" means the activities performed by decontamination specialist in the course of decontaminating residual contamination from the manufacturing of illegal drugs or from the storage of chemicals used in manufacturing illegal drugs and includes not only the removal of any contaminants but inspections and sampling.

(42) "Toxic" means hazardous materials in sufficient concentrations that they can cause local or systemic detrimental effects to people.

(43) "UGWQS" means the Utah Ground Water Quality Standards established in R317-6-2.

(44) "VOA" means volatile organic analyte.

(45) "VOCs" means volatile organic compounds or organic chemicals that can evaporate at ambient temperatures used in the manufacture illegal drugs such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical that may be used to manufacture illegal drugs.

(46) "Waste" means refuse, garbage, or other discarded material, either solid or liquid.

R392-600-3. Preliminary Assessment Procedures.

(1) The decontamination specialist or owner of record shall determine the nature and extent of damage and contamination of the property from illegal drug operations by performing a preliminary assessment prior to decontamination activities. Contamination may be removed prior to approval of the work plan as necessary to abate an imminent threat to human health or the environment. If there was a fire or an explosion in the contaminated portion of the property that appears to have compromised its structural integrity, the decontamination specialist or owner of record shall obtain a structural assessment of the contaminated portion of the property prior to initiating the preliminary assessment.

(2) To conduct the preliminary assessment, the decontamination specialist or owner of record shall:

(a) request and review copies of any law enforcement, state agency or other report regarding illegal drug activity or suspected illegal drug activity at the property;

(b) evaluate all information obtained regarding the nature and extent of damage and contamination;

(c) determine the method of illegal drug manufacturing used;

(d) determine the chemicals involved in the illegal drug operation;

(e) determine specific locations where processing and illegal drug activity took place or was suspected and where hazardous materials were stored and disposed;

(f) use all available information to delineate areas highly suggestive of contamination;

(g) develop procedures to safely enter the property in order to conduct a preliminary assessment;

(h) wear appropriate personal protective equipment for the conditions assessed;

(i) visually inspect all portions of the property, including areas outside of any impacted structure to document where stained materials or surfaces are visible, drug production took place, hazardous materials were stored, and burn pits or illegal drug operation trash piles may have been or are currently present;

(j) determine whether the property contains a septic system on-site and if there has been a release to the system as a result of the illegal drug operations;

(k) determine the locations of the ventilation system components in the areas highly suggestive of contamination;

(l) conduct and document appropriate testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property using instruments such as a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment; and

(m) if decontamination is not anticipated due to the lack of supporting evidence of decontamination, collect confirmation samples to demonstrate compliance with the decontamination standards using the methodology specified in this rule.

(3) If the preliminary assessment does not reveal the presence of contamination above the decontamination standards specified in this rule, the decontamination specialist or owner of record may request that the property be removed from the list of contaminated properties as specified in 19-6-903 provided that:

(a) a final report documenting the preliminary assessment is submitted to the local health department by the owner of record and decontamination specialist if one was involved in conducting the preliminary assessment; and

(b) the local health department concurs with the recommendations contained in the report specified in (a).

(4) If the preliminary assessment reveals the presence of contamination, the decontamination specialist or owner of record shall proceed according to R392-600-4 through R392-600-7. The contaminated portions of the property shall be kept secure against un-authorized access until the work plan has been submitted, any required permit is issued, and the property has been decontaminated to the standards established in this rule.

R392-600-4. Work Plan.

(1) Prior to performing decontamination of the property, the decontamination specialist or owner of record shall prepare a written work plan that contains:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home, trailer or boat;

(b) if applicable, the certification number of the decontamination specialist who will be performing decontamination services on the contaminated portion of the property;

(c) copies of the decontamination specialist's current certification;

(d) photographs of the property;

(e) a description of the areas highly suggestive of contamination, and areas that are considered not highly suggestive of contamination, including any information that may be available regarding locations where illegal drug processing was performed, hazardous materials were stored and stained materials and surfaces were observed;

(f) a description of contaminants that may be present on the property;

(g) results of any testing conducted for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property, such as by a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment;

(h) a description of the personal protective equipment to be used while in or on the contaminated portion of the property;

(i) the health and safety procedures that will be followed in performing the decontamination of the contaminated portion of the property;

(j) a detailed summary of the decontamination to be performed based on the findings and conclusions of the Preliminary Assessment, which summary shall include:

(i) all surfaces, materials or articles to be removed;

(ii) all surfaces, materials and articles to be cleaned on-site;

(iii) all procedures to be employed to remove or clean the contamination, including both areas highly suggestive of contamination as well as those areas that are not highly suggestive of contamination;

(iv) all locations where decontamination will commence;

(v) all containment and negative pressure enclosure plans; and

(vi) personnel decontamination procedures to be employed to prevent the spread of contamination;

(k) the shoring plan, if an assessment of the structural integrity was conducted and it was determined that shoring was necessary, including a written description or drawing that shows the structural supports required to safely occupy the building during decontamination;

(l) a complete description of the proposed post-decontamination confirmation sampling locations, parameters, techniques and quality assurance requirements;

(m) the names of all individuals who gathered samples, the analytical laboratory performing the testing, and a copy of the standard operating procedures for the analytical method used by the analytical laboratory;

(n) a description of disposal procedures and the anticipated disposal facility;

(o) a schedule outlining time frames to complete the decontamination process; and

(p) all available information relating to the contamination and the property based on the findings and conclusions of the preliminary assessment.

(2) Prior to implementing the work plan, it must first be:

(a) approved in writing by the owner of record and, if one is involved, the decontamination specialist who will execute the work plan; and

(b) submitted to the local health department with jurisdiction over the county in which the property is located.

(3) The owner of record, and any decontamination specialist involved in executing the work plan shall retain the work plan for a minimum of three years after completion of the work plan and the removal of the property from the contaminated-properties list.

(4) All information required to be included in the work plan shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-5. Decontamination Procedures.

(1) The decontamination specialists, and owner of record shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations in decontaminating the property.

(2) The decontamination specialist or owner of record shall be present on the property during all decontamination activities.

(3) The decontamination specialist or owner of record shall conduct the removal of the contamination from the property, except for porous materials from areas not highly suggestive of contamination that may be cleaned as outlined in sub-section R392-600-5(12).

(4) The decontamination specialist or owner of record shall see that doors or other openings from areas requiring decontamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent before beginning decontamination to prevent contamination of portions of the property that have not been impacted by illegal drug operations.

(5) Ventilation Cleaning Procedures.

(a) Air registers shall be removed and cleaned as outlined in subsection R392-600-5(12).

(b) All air register openings shall be covered by temporary filter media.

(c) A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.

(d) Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other materials.

(e) The air handler units, including the return air housing, coils, fans, systems, and drip pan shall be cleaned as required in subsection R392-600-5(12).

(f) All porous linings or filters in the ventilation system shall be removed and properly disposed.

(g) The ventilation system shall be sealed off at all openings with at least 4-mil plastic sheeting, or other barrier of equivalent strength and effectiveness, to prevent recontamination until the contaminated portion of the property meets the decontamination standards in R392-600-6(2) and(3).

(6) Procedures for Areas Highly Suggestive of Contamination.

(a) All porous materials shall be removed and properly disposed. On site cleaning of this material is not allowed.

(b) All stained materials from the illegal drug operations shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable drug operation material surfaces may be decontaminated on site and only in accordance with R392-600-5(12).

(c) All non-porous surfaces may be cleaned to the point of stain removal and left in place or removed and properly disposed. Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify

compliance with the decontamination standards contained in R392-600-6(2) and (3).

(d) All exposed concrete surfaces shall be thoroughly cleaned as outlined in R392-600-5(12) and tested to meet the decontamination standards contained in R392-600-6(2) and (3) or may be removed and properly disposed.

(e) All appliances shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392-600-6(2) and (3). For appliances such as ovens that have insulation, a 100 square centimeter portion of the insulation shall also be tested. If the insulation does not meet the decontamination standards contained in R392-600-6(2) and R392-600-6(3), the insulated appliances shall be removed and properly disposed.

(7) Structural Integrity and Security Procedures.

If, as a result of the decontamination, the structural integrity or security of the property is compromised, the decontamination specialist or owner of record shall take measures to remedy the structural integrity and security of the property.

(8) Procedures for Plumbing, Septic, Sewer, and Soil.

(a) All plumbing inlets to the septic or sewer system, including sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other observable residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID in accordance with Section R392-600-6(7). All plumbing traps shall be assessed for mercury vapors in accordance with Section R392-600-6(10) by using a mercury vapor analyzer unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred. If VOC concentrations or mercury vapor concentrations exceed the decontamination standards contained in R392-600-6(2) and (3), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed, or shall be cleaned and tested to meet the decontamination standards contained in R392-600-6(2) and (3).

(b) The decontamination specialist or owner of record shall obtain documentation from the local health department or the local waste water company describing the sewer disposal system for the dwelling and include it in the final report. If the dwelling is connected to an on-site septic system, a sample of the septic tank liquids shall be obtained and tested for VOC concentrations unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred.

(c) If VOCs are not found in the septic tank sample or are found at concentrations less than UGWQS and less than 700 micrograms per liter for acetone, no additional work is required in the septic system area, unless requested by the owner of the property.

(d) If VOCs are found in the septic tank at concentrations exceeding the UGWQS or exceeding 700 micrograms per liter for acetone the following applies:

(i) The decontamination specialist or owner of record shall investigate the septic system discharge area for VOCs, lead, and mercury unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operation;

(ii) The horizontal and vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated relative to background or EPA residential risk based screening concentrations contained in the document listed in R392-600-8.

(iii) If any of the VOCs, mercury, and lead used in the illegal drug operations migrated down to groundwater level, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination.

(iv) After complete characterization of the release, the decontamination specialist or owner of record shall remediate the impacted soils to concentrations below background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8 and any impacted groundwater to concentrations below the UGWQS and below 700 micrograms per liter for acetone.

(v) The contents of the septic tank shall be removed and properly disposed.

(e) The decontamination specialist or owner of record shall also notify the Utah Department of Environmental Quality, Division of Water Quality, if a release has occurred as a result of illegal drug operations to a single family septic system or a multiple family system serving less than 20 people.

(f) All sampling and testing pursuant to this section shall be performed in accordance with EPA sampling and testing protocol.

(9) Procedures for burn areas, trash piles and bulk wastes.

(a) The decontamination specialist or owner of record shall characterize, remove, and properly dispose of all bulk wastes remaining from the activities of the illegal drug operations or other wastes impacted by compounds used by the illegal drug operations.

(b) The decontamination specialist or owner of record shall examine the property for evidence of burn areas, burn or trash pits, debris piles, and stained areas suggestive of contamination. The decontamination specialist or owner of record shall test any burn areas, burn or trash pits, debris piles or stained areas with appropriate soil sampling and testing equipment, such as a LEL/O2 meter, pH paper, PID, FID, mercury vapor analyzer, or equivalent equipment to determine if the area is contaminated.

(c) If the burn areas, burn or trash pits, debris piles, or stained areas are not in a part of the property that has otherwise been determined to be highly suggestive of contamination, the decontamination specialist shall recommend to the owner of the property that these areas be investigated.

(d) If the burn areas, burn or trash pits, debris piles or stained areas are part of the contaminated portion of the property, the decontamination specialist or owner of record shall investigate and remediate these areas.

(e) The decontamination specialist or owner of record shall investigate burn areas, burn or trash pits, debris piles, or stained areas for the VOCs used by the illegal drug operations and lead and mercury, unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operations.

(f) The decontamination specialist or owner of record shall delineate the horizontal and vertical extent of any VOCs, lead, or mercury detected in the soil samples relative to background concentrations or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8.

(g) If any of the compounds used by the illegal drug operation migrated into groundwater, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination relative to the UGWQS and relative to the maximum contaminant level of 700 micrograms per liter for acetone.

(h) After complete characterization of the release, the decontamination specialist or owner of record shall remediate contaminated soils to background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8, and contaminated groundwater to concentrations

at or below the UGWQS and at or below 700 micrograms per liter for acetone.

(i) All sampling and testing conducted under this section shall be performed in accordance with current EPA sampling and testing protocol.

(10) Procedures for areas not highly suggestive of contamination.

(a) Porous materials with no evidence of staining or contamination may be cleaned by HEPA vacuuming and one of the following methods:

(i) Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.

(ii) Detergent and water solution: porous materials shall be washed in a washing machine with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.

(b) All non-porous surfaces such as floors, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture shall be cleaned as outlined in subsection R392-600-5(12).

(c) Doors or other openings to areas with no visible contamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent after being cleaned to avoid re-contamination.

(d) Spray-on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos and for contamination to determine whether ceilings meet the decontamination standards contained in R392-600-6(2) and (3), and if in need of removal, whether asbestos remediation protocols are applicable. If the materials exceed the standards, the decontamination specialist or owner of record shall properly remove and dispose of them.

(e) All exposed concrete surfaces shall be thoroughly cleaned as outlined in subsection R392-600-5(12).

(11) Decontamination procedures for motor vehicles.

If an illegal drug operation is encountered in a motor vehicle, the decontamination specialist or owner of record shall conduct a Preliminary Assessment in the manner described in this rule to determine if the vehicle is contaminated. If it is determined that the motor vehicle is contaminated and the vehicle cannot be cleaned in a manner consistent with this rule, the motor vehicle may no longer be occupied. The vehicle shall also be properly disposed.

(12) Cleaning Procedure.

For all items, surfaces or materials that are identified as easily cleanable and for which the work plan indicates they will be decontaminated on site, the decontamination specialist or owner of record shall wash them with a detergent and water solution and then thoroughly rinse them. This procedure shall be repeated at least two additional times using new detergent solution and rinse water. The decontamination specialist or owner of record shall test all surfaces where decontamination on site has been attempted to verify compliance with the decontamination standards in R392-600-6(2) and R392-600-6(3).

(13) Waste Characterization and Disposal Procedures.

The Hazardous Waste Rules of R315-1 through R315-101, the Solid Waste Rules of R315-301 through R315-320 and the Illegal Drug Operations Decontamination Standards regulate the management and disposal of hazardous waste and contaminated debris generated during decontamination of an illegal drug operations. The decontamination specialist and owner of record shall comply with these rules and meet the following criteria.

(a) No waste, impacted materials or contaminated debris from the decontamination of illegal drug operations may be removed from the site or waste stream for recycling or reuse without the written approval of the local Health Department.

(b) All items removed from the illegal drug operations and waste generated during decontamination work shall be properly disposed.

(c) All liquid waste, powders, pressurized cylinders and equipment used during the production of illegal drugs shall be properly characterized by sampling or testing prior to making a determination regarding disposal or the waste shall simply be considered hazardous waste and properly disposed, except the waste shall not be deemed to be household hazardous waste.

(d) All impacted materials and contaminated debris that are not determined by the decontamination specialist or owner of record to be a hazardous waste may be considered a solid waste and properly disposed.

(e) All Infectious Waste shall be managed in accordance with Federal, State and local requirements.

(f) The disturbance, removal and disposal of asbestos must be done in compliance with all Federal, State, and local requirements including the requirements for Asbestos Certification, Asbestos Work Practices and Implementation of Toxic Substances Control Act, Utah Administrative Code R307-801.

(g) The removal and disposal of lead based paint must be done in compliance with all Federal, State, and local requirements including the requirements for Lead-Based Paint Accreditation, Certification and Work Practice Standards, Utah Administrative Code R307-840.

(h) The decontamination specialist and owner of record shall comply with all Federal, State, Municipal, County or City codes, ordinances and regulations pertaining to waste storage, manifesting, record keeping, waste transportation and disposal.

R392-600-6. Confirmation Sampling and Decontamination Standards.

(1) The decontamination specialist or owner of record shall take and test confirmation samples after decontamination to verify that concentrations are below the decontamination standards prior to the submittal of a final report. Samples are not required if a contaminated surface has been removed and replaced, unless there is evidence that the area has been re-contaminated. All decontaminated areas and materials, areas not highly suggestive of contamination, and surfaces that have not been removed shall be sampled for compliance with the standards in Table 1.

(2) If the decontamination standards are not achieved, the decontamination specialist or owner of record shall perform additional decontamination and re-sample to confirm the surface or area meets the decontamination standards specified in Table 1.

TABLE 1

COMPOUND	DECONTAMINATION STANDARD
Red Phosphorus	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Iodine Crystals	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Methamphetamine	Less than or equal to 1.0 microgram Methamphetamine per 100 square centimeters
Ephedrine	Less than or equal to 0.1 microgram Ephedrine per 100 square centimeters
Pseudoephedrine	Less than or equal to 0.1 microgram Pseudoephedrine per 100 square centimeters

VOCs in Air	Less than or equal to 1 ppm
Corrosives	Surface pH between 6 and 8
Ecstasy	Less than or equal to 0.1 microgram Ecstasy per 100 square centimeters

(3) The decontamination specialist or owner of record shall also conduct sampling and testing for all of the metals listed in Table 2 unless there is clear evidence that these metals were not used in the illegal drug operations. If Table 2 contaminants are present, the decontamination specialist or owner of record shall decontaminate the affected areas and sample until they meet the decontamination standards in Table 2.

TABLE 2

COMPOUND	DECONTAMINATION STANDARD
Lead	Less than or equal to 4.3 micrograms Lead per 100 square centimeters
Mercury	Less than or equal to 3.0 micrograms Mercury per cubic meter of air

(4) Confirmation sampling procedures.

(a) All sample locations shall be photographed.

(b) All samples shall be obtained from areas representative of the materials or surfaces being tested. Samples shall be collected from materials or surfaces using wipe samples and shall be biased toward areas where contamination is suspected or confirmed or was known to be present prior to decontamination.

(c) All samples shall be obtained, preserved, and handled and maintained under chain-of-custody protocol in accordance with industry standards for the types of samples and analytical testing to be conducted.

(d) The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.

(e) All reusable sampling equipment shall be decontaminated prior to sampling.

(f) All testing equipment shall be properly equipped and calibrated for the types of compounds to be analyzed.

(g) Cotton gauze, 3" x 3" 12-ply, in sterile packages, shall be used for all wipe sampling. The cotton gauze shall be wetted with analytical grade methanol for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(h) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be refrigerated until delivered to an analytical laboratory.

(i) Each sample shall be analyzed for methamphetamine, ephedrine, pseudoephedrine, and ecstasy depending upon the type of illegal drug operations using NIOSH Manual of Analytical Method (NMAM) 9106 (or the proposed 9106 method if it is not yet approved) or equivalent method approved by the Utah Department of Health.

(5) Confirmation sampling from areas highly suggestive of contamination.

(a) Samples collected from areas highly suggestive of contamination shall be by grab samples that are not combined with other samples.

(b) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from each room of the property where illegal drug operations occurred, hazardous materials were stored and where staining or contamination are or were present. The three samples shall be obtained from a nonporous section of the floor, one wall, and the ceiling in each room or any other location where contamination is suspected.

(c) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from different areas of the ventilation system, unless the system serves more than one unit or structure. If the system serves more than one unit or structure, samples shall be collected from a representative distribution of the system as well as the corresponding areas that it serves until the contamination is delineated, decontaminated, and determined to be below the decontamination standards established in this rule.

(d) If there is a kitchen, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, or stove top, and from the floor in front of the stove top or any other location where contamination is suspected.

(e) If there is a bathroom, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, toilet, or the shower/bath tub and any other location where contamination is suspected.

(f) If there are any appliances, one 10 cm. x 10 cm. area (100 square centimeters) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 square centimeter areas on three separate appliances, provided that the surfaces most likely to be contaminated are tested.

(g) If there is any other enclosed space where illegal drug operations occurred, hazardous materials were stored, or where staining or contamination is present, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated.

(h) Each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used.

(6) Confirmation sampling from areas not highly suggestive of contamination.

Samples shall be collected in a manner consistent with the confirmation sampling described in Section R392-600-6(5). The samples may be combined together to form one sample per room or sampling area.

(7) VOC sampling and testing procedures.

(a) A properly calibrated PID or FID capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the areas highly suggestive of contamination and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.

(b) At least three locations in areas highly suggestive of contamination shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(8) Testing procedures for corrosives.

(a) Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between 6 and 8. The pH reading shall be recorded for each sample location.

(b) For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(c) For vertical surfaces, a cotton gauze, 3" x 3" 12-ply, in sterile packages, shall be wetted with deionized water and wiped over a 10 cm. x 10 cm. area at least five times in two

perpendicular directions. The cotton gauze shall then be placed into a clean sample container and covered with clean deionized water. The cotton gauze and water shall stand in the container for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(d) pH testing shall be conducted on at least three locations in each room within the areas highly suggestive of contamination.

(9) Lead Sampling and Testing Procedures.

(a) Unless there is clear evidence that lead was not used in the manufacturing of methamphetamine, or ecstasy at the illegal drug operations, lead sampling shall be conducted as follows:

(i) Cotton gauze, 3" x 3" 12-ply, in sterile packages shall be used for wipe sampling. The cotton gauze shall be wetted with analytical grade 3 per cent nanograde nitric acid for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(ii) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be sampled in each room within the areas highly suggestive of contamination; and

(b) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be delivered to an analytical laboratory that uses EPA Method 6010B or an equivalent method approved by the Utah Department of Health.

(c) The sample shall be analyzed for lead using EPA Method 6010B or equivalent.

(10) Mercury Sampling and Testing Procedures.

(a) A properly calibrated mercury vapor analyzer shall be used for evaluating the decontaminated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.

(b) At least three locations in each room within the areas highly suggestive of contamination shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(11) Septic tank sampling and testing procedures.

(a) All sampling and testing shall be performed in accordance with current EPA sampling and testing protocol.

(b) The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.

(c) The liquid shall be decanted or poured with minimal turbulence into three new VOA vials properly prepared by the analytical laboratory.

(d) The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.

(i) The sample vials shall be properly labeled with at least the date, time, and sample location.

(ii) The sample vials shall be refrigerated until delivered to the analytical laboratory.

(iii) The sample shall be analyzed using EPA Method 8260 or equivalent.

(12) Confirmation sampling by Local Health Departments.

The local health department may also conduct confirmation sampling after decontamination is completed and after the final report is submitted to verify that the property has been decontaminated to the standards outlined in this rule.

R392-600-7. Final Report.

(1) A final report shall be:

(a) prepared by the decontamination specialist or owner of record upon completion of the decontamination activities;

(b) submitted to the owner of the decontaminated property and the local health department of the county in which the property is located; and

(c) retained by the decontamination specialist and owner of record for a minimum of three years.

(2) The final report shall include the following information and documentation:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or motorized vehicle;

(b) the name and certification number of the decontamination specialist who performed the decontamination services on the property;

(c) a detailed description of the decontamination activities conducted at the property, including any cleaning performed in areas not highly suggestive of contamination;

(d) a description of all deviations from the approved work plan;

(e) photographs documenting the decontamination services and showing each of the sample locations,

(f) a drawing or sketch of the areas highly suggestive of contamination that depicts the sample locations and areas that were decontaminated;

(g) a description of the sampling procedure used for each sample;

(h) a copy of the testing results from testing all samples, including testing for VOCs, corrosives, and if applicable, lead and mercury, and testing performed by an analytical laboratory;

(i) a written discussion interpreting the test results for all analytical testing on all samples;

(j) a copy of any asbestos sampling and testing results;

(k) a copy of the analytical laboratory test quality assurance data on all samples and a copy of the chain-of-custody protocol documents;

(l) a summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading, weight tickets, and manifests for all materials removed from the property;

(m) a summary of the decontamination specialist or owner of record's observation and testing of the property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;

(n) a written discussion and tables summarizing the confirmation sample results with a comparison to the decontamination standards outlined in this rule; and

(o) an affidavit from the decontamination specialist and owner of record that the property has been decontaminated to the standards outlined in this rule.

(3) All information required to be included in the final report shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-8. Reference.

The document: U.S. Environmental Protection Agency. Region 9: Superfund Preliminary Remediation Goals (PRG) Table, October 2004, is adopted by reference.

KEY: illegal drug operation, methamphetamine decontamination
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Notice of Continuation February 25, 2010

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-33C. Targeted Case Management for the Homeless.
R414-33C-1. Introduction and Authority.

(1) This rule outlines targeted case management services that are available to homeless Medicaid clients.

(2) This rule is authorized under UCA 26-18-3 and implements 42 USC 1396n(g), which authorizes targeted case management services.

R414-33C-2. Definitions.

In this rule, "CHEC" means Child Health Evaluation and Care and is Utah's version of the federally mandated Early Periodic Screening, Diagnosis and Treatment (EPSDT) program. All Medicaid clients from birth through age twenty who are in the Traditional Medicaid Plan are eligible for the CHEC program.

R414-33C-3. Client Eligibility Requirements.

Targeted case management services are available to homeless Medicaid clients enrolled in the Non-Traditional Medicaid Plan, pregnant women, and CHEC-eligible Medicaid recipients enrolled in the Traditional Medicaid Plan who:

(1) reside in Salt Lake, Summit, Wasatch, Weber, or Utah County emergency homeless shelters;

(2) do not otherwise have a permanent address, residence, or facility in which they could reside;

(3) do not live in a boarding home, residential treatment facility, or facility that houses only victims of domestic abuse; or

(4) have left the homeless shelter and require continued targeted case management to prevent a recurrence of homelessness.

R414-33C-4. Program Access Requirements.

(1) Targeted case management services may be provided only by an emergency homeless shelter in Salt Lake, Summit, Wasatch, Weber, or Utah County that is capable of providing temporary shelter for at least 30 days in order to assure that sufficient case management services are provided to successfully reintegrate the homeless individual into the community.

(2) A qualified targeted case manager case must complete a management needs assessment that documents that:

(a) the individual requires treatment or services from a variety of agencies and providers to meet the individual's 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 services.

R414-33C-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.

R414-33C-6. Qualified Providers.

Targeted case management services must be provided by an individual employed by or under contract with the emergency homeless shelter 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 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 a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33C-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 clients.

KEY: Medicaid
September 30, 2009 26-1-5
Notice of Continuation February 23, 2010 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, Effective July 1, 2003;

(2) Waiver for Individuals Age 65 or Older, Effective July 1, 2005;

(3) Waiver for Individuals with Acquired Brain Injuries, Effective July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, Effective July 1, 2006;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, Effective July 1, 2005;

(6) New Choices Waiver, Effective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Health Care Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
June 26, 2007 26-18-3
Notice of Continuation February 24, 2010

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-306. Program Benefits and Date of Eligibility.
R414-306-1. Medicaid Benefits and Coordination with Other Programs.

(1) The Department provides medical benefits to Medicaid recipients as outlined in Section R414-1-6.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

(4) The Department must coordinate with the Children's Health Insurance Program to assure the enrollment of eligible children.

(5) The Department must coordinate with the Women, Infants and Children Program to provide information to applicants and recipients about the availability of services.

R414-306-2. QMB, SLMB, and QI Benefits.

(1) The Department must provide the services outlined under 42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department provides the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

(3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

R414-306-3. Qualified Medicare Beneficiary Date of Entitlement.

(1) Eligibility for the Qualified Medicare Beneficiary (QMB) program begins the first day of the month after the month the Medicaid eligibility agency determines that the individual is eligible, in accordance with the requirements of 42 U.S.C. 1396a(e)(8).

(2) There is no provision for retroactive QMB assistance.

R414-306-4. Effective Date of Eligibility.

(1) Subject to the exceptions in Subsection R414-306-4(3), eligibility for any Medicaid program, and for the Specified Low-income Medicare Beneficiary (SLMB) or Qualified Individual (QI) programs begins the first day of the application month if the individual is determined to meet the eligibility criteria for that month.

(2) An applicant for Medicaid, SLMB or QI benefits may request medical coverage for the retroactive period. The retroactive period is the three months immediately preceding the month of application.

(a) An applicant may request coverage for one or more months of the retroactive period.

(b) Subject to the exceptions in Subsection R414-306-4(3), eligibility for retroactive medical coverage begins no earlier than the first day of the month that is three months before the application month.

(c) The applicant must receive medical services during the retroactive period and be determined eligible for the month he receives services.

(3) To determine the date eligibility for medical assistance may begin for any month, the following requirements apply:

(a) Eligibility of an individual cannot begin any earlier than the date the individual meets the state residency requirement defined in Section R414-302-2;

(b) Eligibility of a qualified alien subject to the five-year bar on receiving regular Medicaid services cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute;

(c) Eligibility of a qualified alien not subject to the five-year bar on receiving regular Medicaid services can begin no earlier than the date the individual meets qualified alien status.

(4) If an applicant is not eligible for the application month, but requests retroactive coverage, the agency will determine eligibility for the retroactive period based on the date of that application.

(5) The agency may use the same application to determine eligibility for the month following the month of application if the applicant is determined ineligible for both the retroactive period and the application month. In this case, the application date changes to the date eligibility begins. The retroactive period associated with the application changes to the three months preceding the new application date.

(6) Medicaid eligibility for certain services begins when the individual meets the following criteria:

(a) Eligibility for coverage of institutional services cannot begin before the date that the individual has been admitted to a medical institution and meets the level of care criteria for admission. The medical institution must provide the required admission verification to the Department within the time limits set by the Department in Rule R414-501. Medicaid eligibility for institutional services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of institutional services.

(b) Eligibility for coverage of home and community-based services under a Medicaid waiver cannot begin before the first day of the month the client is determined by the case management agency to meet the level of care criteria and home and community-based services are scheduled to begin within the month. The case management agency must verify that the individual meets the level of care criteria for waiver services. Medicaid eligibility for waiver services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of waiver services.

(7) An individual determined eligible for QI benefits in a calendar year is eligible to receive those benefits throughout the remainder of the calendar year, if the individual continues to meet the eligibility criteria and the program still exists. Receipt of QI benefits in one calendar year does not entitle the individual to QI benefits in any succeeding year.

(8) After being approved for Medicaid, a client may later request coverage for the retroactive period associated with the approved application if the following criteria are met:

(a) The client did not request retroactive coverage at the time of application; and

(b) The agency did not make a decision about eligibility for medical assistance for that retroactive period; and

(c) The client states that he received medical services and provides verification of his eligibility for the retroactive period.

(9) A client cannot request coverage for the retroactive period associated with a denied application. The client, however, may reapply and a new retroactive coverage period is considered based on the new application date.

R414-306-5. Medical Transportation.

(1) The Department provides non-emergency medical transportation as required by 42 CFR 431.53.

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate

provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in Subsection R414-306-5(14) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of $0.18 per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed $150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If two or more Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or $50 per night, whichever is less. Reimbursement for food costs shall be no more than $25 of the $50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in Subsection R414-306-5(9). The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation 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.

(b) Fees are established using the methodology described in the Utah Medicaid State Plan, Attachment 4.19-B Section R,

Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if paratransit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

R414-306-6. State Supplemental Payments for Institutionalized SSI Recipients.

(1) The Department incorporates by reference Section 1616(a) through (d) of the Compilation of the Social Security Laws, January 1, 2009 ed.

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: effective date, program benefits, medical transportation
February 22, 2010 26-18
Notice of Continuation January 25, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-1. Authority.

This rule is authorized by Title 26, Chapter 18 and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.

(3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Consolidated Omnibus Budget Reconciliation Act" (COBRA) continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. Coverage must include at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations. Lifetime maximum benefits must be at least $1,000,000, the deductible can be no more than $2,500 per individual, and the plan must pay at least 70% of an inpatient stay after the deductible.

(7) "Department" means the Utah Department of Health.

(8) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(9) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least $1,000,000;

(d) the deductible is no more than $2,500 per individual; and

(e) the plan pays at least 70% of an inpatient stay after the deductible.

(10) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(20) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) Adults with children living in the home;

(b) Adults without children living in the home;

(c) Adults enrolled in the PCN program;

(d) Children enrolled in the CHIP program;

(e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the UPP program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan or COBRA continuation coverage.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee leaves the household or dies.

(f) An enrollee or the household moves out of state.

(g) Change of address of an enrollee or the household.

(h) An enrollee enters a public institution or an institution for mental diseases.

(i) An enrollee's subsidy for COBRA continuation coverage provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, Stat. 123 115 ends.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or they may choose direct coverage through the Children's Health Insurance Program.

R414-320-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Applicants and enrollees for the UPP program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the UPP program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the UPP program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-320-16. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the UPP program.

R414-320-5. Verification and Information Exchange.

(1) The applicant and enrollee must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department safeguards information about applicants and enrollees.

(4) There are no provisions for taxpayers to see any information from client records.

(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information release cannot include information obtained through an income match system.

R414-320-6. Residents of Institutions.

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2007 ed., which is incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(a) An applicant who is covered by COBRA continuation coverage may be eligible for UPP enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or

a spouse's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

R414-320-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:

(a) The individual;

(b) The individual's spouse living with the individual;

(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

R414-320-9. Age Requirement.

(1) An individual must be younger than 65 years of age to enroll in the UPP program.

(2) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the UPP program.

R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(4) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the UPP program.

(5) Any income in a trust that is available to, or is received by a household member, is countable income.

(6) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(7) Rental income is countable income. The following expenses can be deducted:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

(8) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(9) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(10) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(11) Child support payments received for a dependent child living in the home are counted as that child's income.

(12) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(13) Supplemental Security Income and State Supplemental payments are countable income.

(14) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(15) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(16) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(17) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(18) Child Care Assistance under Title XX is not countable income.

(19) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(20) Earned and unearned income of a child is not countable income if the child is not the head of a household.

(21) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(22) Reimbursements for employee work expenses incurred by an individual are not countable income.

(23) The value of food stamp assistance is not countable income.

(24) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(25) The additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, which an individual may receive from March 2009 through June 2010 is not countable income.

(26) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(27) COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No. 111 5, 123 Stat. 115, is not countable income.

(28) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

R414-320-11. Budgeting.

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless

the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-320-12. Assets.

There is no asset test for eligibility in the UPP program.

R414-320-13. Application Procedure.

(1) The application is the initial request from an applicant for UPP enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program. The provisions of Section R414-308-3 apply to applicants of the UPP program.

(3) The Department shall reinstate a UPP case without requiring a new application if the case was closed in error.

(4) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) If the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) The individual continues to meet all eligibility requirements.

(5) An applicant may withdraw an application any time before the Department completes an eligibility decision on the application.

(6) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) Benefits for the new household member will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new income test is not required to add the new household member for the months remaining in the current certification period.

(c) A new household member may be added only if the Department has not stopped enrollment under Section R414-320-15.

(d) Income of the new member will be considered at the next scheduled recertification.

(7) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in UPP without waiting for the next open enrollment period.

(8) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in UPP without waiting for the next open enrollment period.

(9) A new child born to or adopted by an enrollee may be enrolled in UPP without waiting for the next open enrollment period.

R414-320-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2007 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the UPP program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to

provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet enrollment eligibility criteria at a time when the Department has not already stopped enrollment under provisions of Section R414-320-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) The applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) The applicant died; or

(c) The applicant cannot be located; or

(d) The applicant has not responded to requests for information within the 30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office as defined in Subsection R414-308-3(2)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance or COBRA continuation coverage and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium. The applicant must enroll in the employer-sponsored health insurance or COBRA continuation coverage no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(5) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by VA Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily, the individual does not enroll in COBRA continuation coverage, and the individual notifies the local office within ten calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsored health insurance or COBRA continuation coverage and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan or COBRA continuation coverage may switch to the UPP program if the individual reports to the local office within ten calendar days of enrolling in an employer-sponsored plan or COBRA continuation coverage and before coverage begins.

(10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health

Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

R414-320-16. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

R414-320-17. Notice and Termination.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The Department shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The Department shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

(4) The Department shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. Notices shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing;

(f) The applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The Department need not give ten-day notice of termination if:

(a) The enrollee is deceased;

(b) The enrollee has moved out of state and is not expected to return;

(c) The enrollee has entered a public institution or institution for mental disease;

(d) The enrollee has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.

R414-320-18. Improper Medical Coverage.

(1) An individual who receives benefits under the UPP program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

R414-320-19. Benefits.

(1) The UPP program provides cash reimbursement to enrollees as described in this section.

(2) The reimbursement shall not exceed the amount the individual pays toward the cost of the employer-sponsored or COBRA continuation coverage.

(3) The amount of reimbursement for an adult will be up to $150 per month per individual.

(4) The amount of reimbursement for children will be up to $120 per month per child for medical and an additional $20 if they choose to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, the children may receive cash reimbursement up to $120 for the medical insurance cost and enroll in direct dental coverage under the CHIP Program.

(b) When the employer-sponsored insurance includes dental, the applicant will be given the choice of enrolling the children in the employer-sponsored dental and receiving an additional reimbursement up to $20, or enrolling in direct dental coverage through the CHIP Program.

KEY: CHIP, Medicaid, PCN, UPP
February 16, 2010 **26-18-3**
26-1-5

R432. Health, Health Systems Improvement, Licensing.
R432-4. General Construction.
R432-4-1. Legal Authority.

This rule is adopted pursuant to Title 26 Chapter 21 for General Hospitals; Specialty Hospitals; Ambulatory Surgical Facilities; Nursing Care Facilities; Inpatient Hospices; Birthing Centers; Abortion Clinics; and Small Health Care Facilities, Levels I, II and III.

R432-4-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving services by establishing construction standards.

R432-4-3. General Design.

(1) The licensee is responsible for assuring compliance with this section.

(2) When testing and certification compliance can only be verified through written documentation, the licensee must maintain documentation in the facility for Department review.

(3) Additional requirements for individual health care facility categories are included in the individual category construction rules sections of the Health Facility Licensure Rules, R432. If conflicts exist between R432-4 and individual category rules, the individual category rules govern.

(4) If conflicts exist between applicable codes, the most restrictive code applies.

(5) When other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the more restrictive requirements apply.

(6) The licensee shall ensure the building complies with the functional requirements for the applicable licensure classification and shall ensure provisions are made for all facilities and equipment necessary to meet the care and safety needs of all clients served, when construction is completed.

R432-4-4. Site Location.

(1) The site of the licensed health care facility shall be accessible to both community and service vehicles, including fire protection apparatus.

(2) Facilities shall ensure that public utilities are available.

R432-4-5. Site Design.

(1) Paved roads shall be provided within the property for access to all entrances, service docks and for fire equipment access to all exterior walls.

(2) Paved walkways shall be provided for pedestrian traffic.

(3) Paved walkways shall be provided from every required exit to a dedicated public way.

(4) Hospitals with an organized emergency service shall have well marked emergency access to facilitate entry from public roads or streets serving the site. Vehicular or pedestrian traffic shall not conflict with access to the emergency service area. The emergency entrance shall be covered to ensure protection for patients during transfer from automobile or ambulance.

R432-4-6. Parking.

(1) Parking shall be provided in accordance with local zoning ordinances.

(2) If local zoning ordinances do not exist, Section 3.2.B Parking, from Guidelines for Design and Construction of Hospital and Health Care Facilities 2001 Edition shall apply and is adopted and incorporated by reference.

(3) The requirements of the Americans with Disabilities Act Accessibility Guidelines, (ADAAG) for handicapped parking access shall apply and parking spaces for the disabled shall be directly accessible to the facility without the need to go behind parked cars.

R432-4-7. Environmental Pollution Control.

Public Law 91-190, National Environment Policy Act, requires the site and project be developed to minimize any adverse environmental effects on the neighborhood and community. Environmental clearances and permits shall be obtained from local jurisdictions and the Utah Department of Environmental Quality.

R432-4-8. Standards Compliance.

(1) The following standards are adopted and incorporated by reference:

(a) Illuminating Engineering Society of North America, IESNA, publication RP-29-95, Lighting for Hospitals and Health Care Facilities, 1995 edition;

(b) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, 2000 edition:

(i) Chapter 18, New Health Care Occupancies;

(ii) Chapter 19, Existing Health Care Occupancies.

(2) The following codes and standards apply to health care facilities. The licensee shall obtain clearance from the authority having jurisdiction and submit documentation to the Department verifying compliance with these codes and standards as they apply to the category of health care facility being constructed:

(a) Local zoning ordinances;

(b) International Building Code, 2000 edition;

(c) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993);

(d) International Mechanical Code, 2000 edition;

(e) International Plumbing Code, 2000 edition;

(f) International Fire Code, 2000 edition.

(g) R313. Environmental Health, Radiation Control, 1994;

(h) R309. Environmental Health, Drinking Water and Sanitation, 1994;

(i) R315. Environmental Health, Solid and Hazardous Waste, 1994;

(j) NFPA 70, National Electric Code, 1999 edition;

(k) NFPA 99, Standards for Health Care Facilities, 1999 edition;

(l) NFPA 110, Emergency and Standby Power Systems, 1988 edition;

(m) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals, 1997 edition.

(3) The licensee shall obtain a Certificate of Occupancy from the local building official having jurisdiction.

(4) The licensee shall obtain a Certificate of Fire Clearance from the Fire Marshal having jurisdiction.

(5) The licensee must obtain clearance from the Department prior to utilization of newly constructed facilities and additions or remodels of existing facilities.

R432-4-9. New Construction, Additions and Remodeling.

(1) New construction, additions and remodels to existing structures, shall comply with Department rules in effect on the date the schematic drawings are submitted to the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with adopted codes and rules governing new construction which are in effect on the date the schematic drawings are submitted to the Department.

(3) During remodeling and new construction, the licensee must maintain the safety level which existed prior to the start of work.

R432-4-10. Existing Building Licensure.

(1) Existing buildings, currently licensed, shall conform to Department construction rules in effect at the time of original facility licensure.

(2) Existing buildings which are currently licensed, or which were previously licensed, but are changing classification; or for which the licensed has lapsed, shall comply with requirements for new construction.

R432-4-11. Building Refurbishing.

(1) Paint, carpet, wall coverings, and other new materials installed as part of a refurbishing project shall comply with R432-4-8.

(2) The licensee shall maintain documentation of compliance with codes, rules, and standards.

R432-4-12. Mixed Occupancies.

(1) Health care occupancies must be separated from non-health care occupancies in accordance with requirements of the local jurisdiction.

(2) If separation of occupancies is not practical, the most restrictive occupancy requirements apply to the building.

R432-4-13. Campus and Contract Facilities.

All housing, treatment, and diagnostic areas and facilities utilized by a patient admitted to a licensed health care facility shall be constructed in accordance with the requirements of R432-4 if:

(1) the area will be used by one or more patients who are physically or mentally incapable of taking independent life saving action in an emergency;

(2) the prescribed or administered treatment renders the patient incapable of taking independent life saving action in an emergency; or

(3) the patient is incapable of taking independent life saving action in an emergency due to physical or chemical restraints.

R432-4-14. Plan Review.

(1) Prior to submitting documents for plans review, the facility licensee or designee shall schedule a conference with Department representatives, the licensee's architect, and the licensee or his designee to outline the required plans review process.

(2) The licensee shall submit the following for Department review:

(a) a functional program,

(b) schematic drawings,

(c) design development drawings,

(d) working drawings,

(e) specifications.

(3) The Department may initiate review when all required documents and fees are received.

(4) Working drawings and specifications for new construction, additions, or remodeling must have the seal of a Utah licensed architect affixed, in compliance with Section 58-3a-602.

(5) The licensee shall pay a plans review and construction inspection fee assessed by the Department in accordance with the fee schedule approved by the Legislature.

(6) Plans approval by the Department shall not relieve the licensee of responsibility for full compliance with R432-4.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or the latest plan review response letter, if construction has not commenced.

(8) After a 12 month lapse, the licensee must resubmit plans and a new plan review fee to the Department and obtain a new letter of approval before work proceeds.

(9) The Department may issue a license or modify a license only after the Department has determined the facility complies with adopted construction rules and has obtained all clearances and certifications.

R432-4-15. Functional Program.

The functional program required in R432-4-14(2)(a) must include the following:

(1) the purpose and proposed license category of the facility;

(2) services offered, including a detailed description of each service;

(3) ancillary services required to support each function or program;

(4) departmental relationships;

(5) services offered under contract by outside providers and the required in-house facilities to support these services;

(6) services shared with other licensure categories or functions;

(7) a description of anticipated in-patient workloads;

(8) a description of anticipated out-patient workloads;

(9) physical and mental condition of intended patients;

(10) patient age range;

(11) ambulatory condition of intended patients, such as non-ambulatory, mobile, or ambulatory;

(12) type and use of general or local anesthetics;

(13) use of physical or chemical restraints;

(14) special requirements which could affect the building;

(15) area requirements for each service offered, stated in net square feet;

(16) seclusion treatment rooms, if provided, including staff monitoring procedures;

(17) exhaust systems, medical gases, laboratory hoods, filters on air conditioning systems, and other special mechanical requirements;

(18) special electrical requirements;

(19) x-ray facilities, nurse call systems, communication systems, and other special systems;

(20) a list of specialized equipment which could require special dedicated services or special structures.

(21) a description of how essential core services will accommodate increased demand, if a building is designed for expansion;

(22) inpatient services, treatment areas, or diagnostic facilities planned or anticipated to be housed in other buildings, the construction type of the other buildings, and provisions for protecting the patient during transport between buildings.

(23) infection control risk assessment to determine the need for the number and types of isolation rooms over and above the minimum numbers required by the Guidelines.

R432-4-16. Drawings.

Drawings must show all equipment necessary for the operation of the facility.

(1) Schematic drawings may be single line and shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of departments to each other, to support facilities, and to common facilities;

(f) relationships of rooms and areas within departments;

(g) number of inpatient beds;

(h) total building area or area of additions or remodeled portions.

(2) Design development drawings, drawn to scale, shall contain the following information:

(a) room sizes;

(b) type of construction, using International Building Code classifications;

(c) site plan, showing relationship to streets and vehicle access;

(d) outline specification;

(e) location of fire walls, corridor protection, fire hydrants, and other fire protection equipment;

(f) location and size of all public utilities;

(g) types of mechanical, electrical and auxiliary systems; and

(h) provisions for the installation of equipment which requires dedicated building services, special structure or which require a major function of space.

(3) Working drawings shall include all previous submitted drawings and specifications.

(a) The licensee shall provide one copy of completed working drawings and specifications to the Department.

(b) Within 30 days after receipt of the required documentation and plan review fee, the Department will provide to the licensee and the project architect a written report of modifications required to comply with construction standards.

(c) The licensee shall submit the revised plans for review and final Department approval.

R432-4-17. Construction Inspections.

(1) The Department may conduct interim inspections during construction.

(2) The licensee shall schedule with the Department a final construction inspection when the project is complete and all furnishings and equipment are in place, but prior to utilization.

R432-4-18. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and approve occupancy only after as-built drawings have been approved by the Department and the Department has conducted a construction inspection.

(2) The licensee must correct all noncompliant items and pay the full plans review fee and inspection fee in accordance with the established fee schedule prior to licensure and patient occupancy.

R432-4-19. Existing Buildings Without Plans.

(1) If plans are not available for existing buildings, or for facilities requesting an initial license or license category change, the licensee may submit to the Department the following information:

(a) a functional program described in R432-4-15;

(b) a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the material submitted and within 30 days after receipt of the required material, furnish to the licensee a letter of approval or rejection. The Department may provide, at its option, a report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department follow up inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee must pay an inspection fee in accordance with the fee schedule approved by the Legislature.

(5) The Department may issue a license when the building is in compliance with all licensing rules.

R432-4-20. Construction Phasing.

Projects involving remodeling or additions to existing buildings shall be scheduled and phased to minimize disruption to the occupants of facilities and to protect the occupants against construction traffic, dust, and dirt from the construction site. Guidelines for Design and Construction of Hospital and Health Care Facilities 2001 edition Section 5 is adopted and incorporated by reference.

R432-4-21. Outpatient Unit Features.

(1) If a building entrance is used to reach outpatient services, the entrance must be at grade level, clearly marked, and located to minimize the need for outpatients to traverse other program areas. The outpatient surgery discharge location must provide protection from the weather by canopies that extend from the building to permit sheltered transfer to an automobile.

(2) Lobbies of multi-occupancy buildings may be shared if the design prohibits unrelated traffic within or through units or suites of the licensed health care facility.

R432-4-22. Standards for Accessibility.

(1) At least one drinking fountain, toilet, and handwashing facility shall be available on each floor for persons with disabilities.

(2) Each room required to be accessible to persons utilizing wheelchairs shall comply with ADAAG.

R432-4-23. General Construction.

(1) Guidelines for Design and Construction of Hospital and Health Care Facilities 2001 edition, Section 7 and Appendix A (Guidelines), and Sections 9.1, 9.2, 9.3, 9.4, and 9.9 for free-standing satellites or in-house outpatient programs, are adopted and incorporated by reference except as modified in this section. Swing beds must meet the requirements of Sections 7 and 8 of the Guidelines.

(2) If a modification is cited for the Guidelines, the modification supersedes conflicting requirements of the Guidelines.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(4) Waste Processing Systems. Facilities shall provide sanitary storage and treatment areas for the disposal of all categories of waste, including hazardous and infectious wastes using techniques acceptable to the Utah Department of Environmental Quality, and the local health department having jurisdiction.

(5) Windows, in rooms intended for 24-hour occupancy, shall open to the building exterior or to a court which is open to the sky.

(a) Windows shall be equipped with insect screens.

(b) Operation of windows shall be restricted to a maximum opening of six inches to prevent escape or suicide.

(c) Window opening shall be restricted regardless of the method of operation or the use of tools or keys.

(6) Trash chutes, laundry chutes, dumb waiters, elevator shafts, and other similar systems shall not pump contaminated air into clean areas.

(7) All public and patient toilet and bath areas must have grab bars. Grab bar sizes and configurations shall comply with ADAAG.

(8) Each patient handwashing fixture shall have a mirror. Patient toilet and bath rooms that are required to be accessible to persons utilizing wheel chairs shall have mirrors installed in accordance with ADAAG.

(9) Showers and tubs shall contain recessed soap dishes.

(10) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(11) Floors and bases of kitchens, toilet rooms, bath rooms, janitor's closets and soiled workrooms shall be homogenous and shall be coved. Other areas subject to frequent wet cleaning shall have coved bases that are sealed to the floor.

(12) Acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in patient areas, nurse stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(13) Carpet.

Carpet in institutional occupancy patient areas, except public lobbies and offices, shall be treated to meet the following microbial resistance ratings as tested in accordance with test methods of the American Association of Textiles, Chemists, and Colorists (AATCC):

(a) Rating: minimum 90% bacterial reduction, test method: AATCC 100.

(b) Rating: maximum 20% fungal growth, test method: AATCC 174-99.

(c) Rating: Exhibits no zone of inhibition, test method: AATCC 174-99.

(d) Resilient backed carpet may be used in lieu of anti-microbial carpet.

(e) Carpet and padding shall be stretched taut and be free of loose edges to prevent tripping.

(14) Signs shall be provided as follows:

(a) General and circulation direction signs in corridors;

(b) Identification on or by the side of each door; and

(c) Emergency evacuation directional signs.

(15) Elevators.

Elevators intended for patient transport shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

(16) All rooms and occupied areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and patient rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(a) Bottoms of ventilation openings shall be located at least three inches, above the floor.

(b) Supply and return systems shall be in ducts. Common returns using corridors or attic spaces as plenums are prohibited.

(17) In facilities other than general hospitals, specialty hospitals, and nursing care facilities, hot water recirculation is not required if the linear distance along the supply pipe from the water heater to the fixture does not exceed 50 feet.

(18) Medical gas and air system outlets shall be provided as outlined in Table 7.5 of the Guidelines.

(c) Bed pan washing devices may be deleted from inpatient toilet rooms where a soiled utility room is within the unit which includes bed pan washing capability.

(19) Building sewers shall discharge into a community sewer system. If a system is not available, the facility shall treat its sewage in accordance with local requirements and Utah Department of Environmental Quality requirements.

(20) Dishwashers, disposers and appliances shall be National Sanitation Foundation, NSF, approved and shall have the NSF seal affixed.

(21) Electrical materials shall be listed as complying with standards of Underwriters Laboratories, Inc. or other equivalent nationally recognized standards.

(a) Approaches to buildings and all spaces within the buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with at least mid range requirements shown in Tables 1A and 1B of the Guidelines in 29-95, Lighting for Health Facilities, by the Illuminating Engineering Society of North America.

(b) Parking lots shall have fixtures for lighting to provide light levels as recommended in IESNA Lighting for Parking Facilities (RP-20-1998).

(c) Receptacles and receptacle cover plates on the electrical emergency system shall be red.

(d) The activating device for nurse call stations shall be of a contrasting color to the adjacent floor and wall surfaces to make it easily visible in an emergency.

(e) Fuel storage capacity of the emergency generator shall permit continuous operation of the facility for 48 hours.

(f) Building electrical services connected to the emergency electrical source must comply with the specific rules for each licensure category.

R432-4-24. General Construction, Patient Service Facilities.

Guidelines for Design and Construction of Hospital and Health Care Facilities 2001 edition, Section 7 and Appendix A (Guidelines), are incorporated and adopted by reference and shall be met except as modified in this section. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(1) Hospitals must have at least one nursing unit of at least six beds containing patient rooms, patient care spaces, and service areas.

(a) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the service areas shall be contiguous to each nursing unit served.

(b) Identifiable spaces shall be provided for each of the required services.

(i) When used in this rule, "room or office" describes a specific, separate, enclosed space for the service.

(ii) When "room or office" is not used, multiple services may be accommodated in one enclosed space.

(c) Facility services shall be accessible from common areas without compromising patient privacy.

(2) Patient room area is identified in each individual construction rule for the licensure category rule.

(a) The closets in each patient room shall be a minimum of 22 inches deep by at least 22 inches wide and high enough to hang full length garments and to accommodate two storage shelves.

(b) Pediatric units must have at least one tub room with a bathtub, toilet and sink convenient to the unit. The tub room may be omitted if all patient rooms contain a tub in the toilet room.

(3) A "Continuing Care Nursery"must have one oxygen, one medical air and one vacuum per bassinet.

(4) Appendix A7.2.A1 of the Guidelines , single patient room occupancy, applies to new construction only.

(5) Provisions for an isolation room for infectious patients in Phase II recovery, as discussed in 7.7.C14 of the Guidelines, is deleted.

(6) Postpartum rooms, in new construction, shall be single patient rooms.

(7) The facility must provide linen services as follows:

(a) Processing laundry may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(b) If laundry is processed by an outside commercial laundry, the following shall be provided:

(i) a separate room for receiving and holding soiled linen until ready for transport;

(ii) a central, clean linen storage and issuing room(s) to accommodate linen storage for four days operation or two normal deliveries, whichever is greater; and

(iii) handwashing facilities in each area where unbagged, soiled linen is handled.

(c) If the facility processes it's own laundry, within the facility or in a separate building, the following shall be provided:

(i) a receiving, holding, and sorting room for control and distribution of soiled linen;

(ii) a washing room with handwashing facilities and commercial equipment that can process a seven day accumulation of laundry within a regularly scheduled work

week;

(iii) a drying room with dryers adequate for the quantity and type of laundry being processed; and

(iv) a clean linen storage room with space and shelving adequate to store one half of all linens and personal clothing being processed.

(d) Soiled linen chutes shall discharge directly into the receiving room or in a room separated from the washing room, drying room and clean linen storage.

(e) Prewash facilities may be provided in the receiving, holding and sorting rooms.

(f) If laundry is processed by the facility, either a two or three room configuration may be used as follows;

(i) A two room configuration shall consist of the following:

(A) a room housing soiled linen receiving, sorting, holding, and prewash facilities; washers; and handwashing facilities; and

(B) a room housing dryers; clean linen folding, sorting, and storage facilities; and handwashing facilities.

(ii) A three room configuration shall consist of:

(A) a soiled linen receiving, sorting, holding room with prewash and handwashing facilities;

(B) a combination washer and dryer room arranged so linen flows from the soiled receiving area to the washers, to the dryers, and then to clean storage; and

(C) a clean storage room with folding, sorting, storage and handwashing facilities.

(iii) Physical separation shall be maintained between rooms by means of self closing doors.

(iv) Air movements shall be from the clean area to the soiled area. Air from the soiled area shall be exhausted directly to the outside.

(g) Handwashing sinks shall be provided and located within the laundry areas to maintain the functional separation of the clean and soiled processes.

(h) Rooms shall be arranged to prevent the transport of soiled laundry through clean areas and the transport of clean laundry through soiled areas.

(i) Convenient access to employee lockers and lounges shall be provided.

(j) Storage for laundry supplies shall be provided.

(k) A cart storage area for separate parking of clean and soiled linen carts shall be provided out of normal traffic paths.

R432-4-25. Excluded Sections of the Guidelines.

The Linen Services section 7.23 of the Guidelines does not apply.

R432-4-26. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
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R432. Health, Health Systems Improvement, Licensing.
R432-5. Nursing Facility Construction.
R432-5-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-5-2. Purpose.

The purpose of this rule is to promote the health and welfare through the establishment and enforcement of construction standards. The intent is to provide residential like environments and encourage social interaction of residents.

R432-5-3. Definitions.

(1) "Special Care Unit" means a physical area within a licensed facility designated for the housing and treatment of residents diagnosed with a specifically defined disease or medical condition.

(2) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-5-4. Description of Service.

(1) A nursing unit shall consist of resident rooms, resident care spaces, and services spaces.

(2) Each nursing unit shall contain at least four resident beds.

(3) Rooms and spaces composing a nursing unit shall be contiguous.

(4) A nursing care facility operated in conjunction with a general hospital or other licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more facilities.

(5) Special care units shall comply with all provisions of R432-5.

(6) Windows, in rooms intended for 24-hour occupancy, shall be operable.

R432-5-5. General Design Requirements.

R432-4-1 through R432-4-23, and 24(3) apply with the following modifications.

(1) Fixtures in all public and resident toilet and bathrooms shall comply with Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993). These rooms shall be wheelchair accessible with wheelchair turning space within the room.

(2) Lavatories, counters, and door clearances within resident rooms shall be wheelchair accessible.

R432-5-6. General Construction Requirements.

(1) Nursing facilities shall be constructed in accordance with the Guidelines for Design and Construction of Hospital and Health Care Facilities (Guidelines), Section 8 and Appendix A, 2001 edition which is adopted by reference.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

R432-5-7. Nursing Unit.

(1) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each nursing unit served.

(2) Facility service areas shall be accessible from common areas without compromising resident privacy.

(3) Each nursing unit shall have a maximum number of 60 beds.

(4) At least two single-bed rooms, each with private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each nursing unit.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or handwashing sink shall be provided in the resident room.

(b) Ventilation shall be in accordance with Table 6 with all air exhausted to the outside.

(5) Each room shall have a window in accordance with R432-4-23(5).

(6) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned to accommodate full length garments.

(7) A nurse call system is not required in facilities which care for persons with mental retardation or developmental disabilities. With prior approval of the Department, a nursing facility may modify the system to alleviate hazards to residents.

(8) Handwashing facilities shall be located near the nursing station and the drug distribution station.

(9) A staff toilet room may also serve as a public toilet room if it is located in the nursing unit.

(10) A clean workroom or clean holding room with a minimum area of 80 square feet shall provide for preparing resident care items.

(a) The clean work room shall contain a counter, handwashing facilities and storage facilities.

(b) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(11) If a medical cart is used it shall be under visual control of staff.

(a) Double locked storage shall be provided for controlled drugs.

(b) Provisions shall be made for receiving, assembling, and storage of drugs and other pharmacy products.

(12) If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited.

(13) Ice intended for human consumption shall be dispensed by self dispensing ice makers. Bin type storage units are prohibited.

(14) Gurney showers for residents may be provided at the option of the facility.

(a) One bathtub and shower shall be provided on each nursing floor in addition to bath fixtures in resident toilet rooms.

(b) At least one shower on each floor shall be at least four feet square without curbs designed for use by a resident using a wheelchair.

(c) Each resident bathtub and shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(15) At least one toilet room shall be provided on each floor containing a nursing unit to be used for resident toilet training.

(a) The room shall contain a toilet and lavatory with wheelchair turning space within the room.

(b) A toilet room with direct access from the bathing area shall be provided at each central bathing area if a toilet is not otherwise provided in the bathing area. The toilet training facility may serve this function if there is direct access from the bathing area.

(c) Doors to toilet rooms shall have a minimum width of 34 inches to admit a wheelchair. The doors shall permit access from the outside in case of an emergency.

(d) A handwashing fixture shall be provided in each toilet room.

(16) An equipment storage room with a minimum area of 120 square feet for portable equipment shall be provided.

R432-5-8. Resident Support Areas.

(1) Occupational therapy service areas may be counted in

the calculation of support space.

(2) Physical Therapy, personal care room, and public waiting lobbies shall not be included in the calculation of support space.

(3) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents.

(4) There shall be a general purpose room with a minimum area of 100 square feet equipped with a table and comfortable chairs.

(5) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

(6) Examination and Treatment rooms.

(a) An examination and treatment room shall be provided except when all resident rooms are single bed rooms.

(b) An examination and treatment room may be shared by multiple nursing units.

(c) When provided, the room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or moveable.

(d) The room shall contain a lavatory equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(7) In addition to facility general storage areas, at least five square feet per bed shall be provided for resident storage.

R432-5-9. Rehabilitation Therapy.

(1) A separate storage room for clean and soiled linen shall be provided contiguous to the rehabilitation therapy area.

(2) Storage for rehabilitation therapy supplies and equipment shall be provided.

R432-5-10. General Services.

(1) Linen services shall comply with R432-4-24(3).

(2) There shall be one housekeeping room for each nursing unit.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-5-11. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques defined by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-5-12. Details and Finishes.

(1) Grab bars shall be installed in all toilet rooms in accordance with the ADAAG.

(2) Corridor and hallway handrails shall comply with ADAAG. The top of the rail shall be 34 inches above the floor, except for areas serving children and other special care areas.

(3) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(4) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADAAG.

(5) Partitions, floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

TABLE 1

Sound Transmission Limitations in Long-Term Care Facilities

Airborne Sound Transmissions
Transmissions Class (STC) (a)

Class (IIC) (b) (Residents')	Partitions	Floors
room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient's rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-5-13. Elevators.

At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-5-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Air Conditioning, Heating, and Ventilating Systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may only be used in kitchen hood systems that provide 100% outside air.

(d) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air shall be recirculated into the building system.

(e) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(f) Filtration shall be provided when mechanically circulated outside air is used.

(g) Hoods.

(i) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat activated fan controls.

(ii) Cleanout openings shall be provided every 20 feet in horizontal sections of duct systems serving the hoods.

(h) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other nonresident areas.

(4) Plumbing and other Piping Systems shall include:

(a) Handwashing facilities that are arranged to provide sufficient clearance for single lever operating handles.

(b) Dishwashers, disposal and appliances that are National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(c) Kitchen grease traps that are located and arranged to permit access without the need to enter food preparation or storage areas.

(d) Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities that is regulated by thermostatically controlled automatic mixing valves. These

valves may be installed on the recirculating system or on individual inlets to appliances.

R432-5-15. Electric Standards.

(1) Operators shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for parking facilities by the Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) Each examination and work table shall have access to a minimum of two duplex outlets.

(5) Receptacles and receptacle cover plates on the emergency system shall be red.

(6) An on-site emergency generator shall be provided in all nursing care facilities except small ICF/MR health care facilities of 16 beds or less.

(a) In addition to requirements of NFPA 70, Section 517-40, the following equipment shall be connected to the critical branch of the essential electrical system.

(i) heating equipment necessary to provide heated space sufficient to house all residents under emergency conditions,

(ii) duplex convenience outlets in the emergency heated area at the ratio of one duplex outlet for each ten residents,

(iii) nurse call system,

(iv) one duplex receptacle in each resident bedroom.

(b) Fuel storage shall permit continuous operation of the services required to be connected to the emergency generator for 48 hours.

R432-5-16. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Parking, Section 8.1.F.

(2) Program of Functions, Section 8.1.G.

(3) Clean workroom, Subsection 8.2.C.5.

(4) Linen Services, section 8.11.

(5) Clusters and Staffing Considerations, section A8.2.A. The cluster design concept has proven beneficial in numerous cases, but is optional. However, the Department encourages new construction projects to consider this concept.

R432-5-17. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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R432. Health, Health Systems Improvement, Licensing.
R432-6. Assisted Living Facility General Construction.
R432-6-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) International Building Code, 2000 edition;

(c) International Plumbing Code, 2000 edition;

(d) International Fire Code, 2000 edition; and

(e) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A (July 1993).

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with Department representatives to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

(a) the purpose and license category of the facility;

(b) services offered, including a detailed description of each service;

(c) ancillary services required to support each function or program;

(d) services offered under contract by outside providers and the required in-house facilities to support these services;

(e) services shared with other health care licensure categories or functions;

(f) physical and mental condition of intended residents;

(g) ambulatory condition of intended residents, such as mobile or ambulatory;

(h) special electrical requirements related to resident care; and

(i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage and any natural drainage channels which traverse the site;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of rooms and areas within departments;

(f) number of resident beds; and

(g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

(a) room dimensions and room square footage;

(b) site plan, showing relationship to streets and vehicle access;

(c) location and size of public utilities; and

(d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

(1) The Department may conduct interim inspections.

(2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

(1) Surrounding land for outdoor activities;

(2) Paved roads for access to service docks and entrances;

(3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADAAG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly accessible to the facility without requiring the disabled to go behind parked cars.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident bedroom or sleeping room shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the International Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADAAG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

(a) rooms for mechanical equipment or electrical equipment;

(b) a storage room for building maintenance supplies;

(c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;

(d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and

(e) in large facilities, a separate maintenance room or office.

(3) In small and large facilities a housekeeping room shall be located on each floor of the assisted living facility. In large facilities this room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided for interior spaces independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters in accordance with Table 2.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/ person
Soiled Linen holding	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

(4) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(5) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

	Resident Care Areas	Dietary	Laundry
Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers, in sink garbage disposers, and other appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for Parking Facilities by the Illuminating Engineering Society of North America, which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall. If a TV jack is included, there must be an extra outlet on the wall with the TV jack.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) food preparation area;

(c) an area to serve and distribute resident meals;

(d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) a storage area for waste which is located next to an outside facility exit for direct pickup; and

(f) a space for meal planning.

R432-6-26. Penalties.

The Department may assess a civil money penalty of up to

$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

(1) Large assisted living facilities shall comply with I-1, International Building Code, requirements.

(2) Small assisted living facilities shall comply with R-4, International Building Code, requirements.

(3) Limited capacity assisted living facilities shall comply with R-3, International Building Code, requirements.

R432-6-102. Common Areas.

(1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.

(a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.

(i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.

(ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the common rooms minimum square footage per bed may be reduced to 25.

(b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R432-6-103. Resident Units.

(1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.

(a) The areas noted above are minimums and do not prohibit larger rooms.

(b) Resident units may not have more than two beds per unit

(2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.

(3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.

(5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

(1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.

(2) Resident toilet, bathtub, shower rooms, and facilities designed for use by the disabled shall comply with ADAAG.

(3) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility.

(4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.

(5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.

(6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.

(7) Each central bathroom shall have a toilet and lavatory.

(8) Toilet and bathing facilities shall not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.

(10) Showers and bathrooms shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

There shall be adequate space and equipment for the following service or functions.

(1) Large assisted living facilities must provide the following:

(a) an administrator's office with equipment for keeping records and supplies;

(b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;

(c) a public reception or information area; and

(d) housekeeping closets each with a floor receptor or service sink.

(2) The following required spaces apply to all type I assisted living facilities:

(a) A secure area for administrative activities and storage for resident records;

(b) a medication-storage area including a locked drug cabinet;

(c) a closet or compartment for the staff's personal effects;

(d) a clean linen storage area;

(e) a telephone for private use by residents or visitors;

(f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and

(g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.

(2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

(1) A signal system is required for the following facilities:

(a) a large facility;

(b) a facility with bedrooms on more than one floor; and

(c) when staff are not continuously present on the same level as any resident.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit, and from each bathroom or toilet room;

(b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff;

(c) the signal system shall be designed to turn off only at the resident calling station; and

(d) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

(1) Large assisted living facilities shall comply with I-2 International Building Code requirements and shall have, at a minimum, 6 foot wide corridors. Area, height and story increases as permitted in the body of IBC paragraph 504.2 shall be permitted.

(2) Small assisted living facilities shall comply with I-1, International Building Code, requirements and shall have, at a minimum, six-foot wide corridors.

(3) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, International Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at grade level.

R432-6-202. Campus-Type Facilities.

(1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.

(2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.

(3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

(1) Facility services shall be accessible from common areas without compromising resident privacy.

(2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:

(a) A single occupant unit without additional living space shall be a minimum of 120 square feet.

(b) A double occupant unit without additional living space shall be a minimum of 200 square feet.

(c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.

(d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.

(3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a resident's bedroom.

(4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.

(6) A maximum of two residents may occupy a resident living unit.

(7) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-204. Toilet and Bathing Facilities.

(1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.

(2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADAAG.

(3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADAAG.

(4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.

(5) If resident living units do not have a private bathroom, the facility shall provide the following:

(a) a toilet and lavatory for every four residents;

(b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and

(c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.

(6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.

(7) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility not designed for accessibility.

(8) Toilet and bathing facilities may not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.

(10) Showers and tubs shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.

(12) All lavatories shall have hand drying facilities.

(a) If lavatories are used by more than one individual, enclosed, single use paper towel dispensing units or cloth towel dispensing units or hot air drying units shall be provided.

(b) Lavatories shall be anchored to withstand an applied vertical load of 250 pounds on the front of the fixture.

(13) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

(1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.

(a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.

(b) Space shall be provided for storing recreational equipment and supplies.

(2) The facility shall provide the following minimum space for recreational activities:

(a) in large facilities, 20 square feet per bed;

(b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;

(c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident living unit, the square footage requirements for common

recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be 50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off only at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 8.8 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADAAG requirements. Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADAAG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails shall meet the requirements of ADAAG and be provided on both sides of all resident corridors.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a laundry room for receiving, holding, washing, drying, and sorting soiled linens, with the following:

(i) a pre-wash sink at least 13 inches deep by 20 inches wide;

(ii) a separate hand washing sink;

(iii) washer(s) and dryer(s); and

(iv) storage for laundry supplies;

(b) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(c) a central, clean linen storage room(s);

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;
(b) a washer and dryer; and
(c) a utility sink in the laundry room.
(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

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R432. Health, Health Systems Improvement, Licensing.
R432-7. Specialty Hospital - Psychiatric Hospital Construction.
R432-7-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-7-2. Purpose.

The purpose of this rule is to establish construction standards for a specialty hospital for psychiatric services.

R432-7-3. General Design Requirements.

R432-4-1 through R432-4-22 apply to this rule with the following modifications.

R432-7-4. General Construction, Ancillary Support Facilities.

R432-4-23 (2) through (19) applies with the following modifications:

(1) Leaf width for patient room doors and doors to patient treatment rooms shall be a minimum of three feet.

(2) Corridors in patient use areas shall be a minimum of six feet wide.

(3) Grab Bars. Where grab bars are provided, the space between the bar and the wall shall be filled. Bars, including those which are part of such fixtures as soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds. Grab bars shall meet the requirements of ADAAG.

(4) Emergency Electrical Service. An on-site emergency generator shall be provided connecting the following services:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(b) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(d) telephone;

(e) nurse call;

(f) heating equipment necessary to provide heating space to house all patients under emergency conditions;

(g) one duplex convenience outlet in each patient bedroom;

(h) one duplex convenience outlet at each nurses station; and

(i) duplex convenience outlets in the emergency heated part at a ratio of one for each ten patients.

(5) Nurse Call System. A nurse call system is optional. If installed, provisions shall be made for the easy removal or covering of call buttons.

(6) X-ray Equipment. If installed, fixed and mobile x-ray equipment shall conform to Articles 517 and 660 of NFPA 70.

(7) Security glazing. Security glazing and other security features shall be used at all windows of the nursing unit and other patient activity and treatment areas to reduce the possibility of patient injury or escape.

R432-7-5. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and Section 11 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, including the Appendix, 2001 edition (Guidelines) shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Patient Rooms.

(a) At least two single bed rooms with a private toilet room shall be provided for each nursing unit.

(b) Minimum clear dimensions of closets in patient rooms shall be 22 inches deep and 36 inches wide. The clothes rod shall be of the breakaway type.

(3) The Service Area, Guidelines Section 11.2.B, is modified as follows:

(a) Each bathtub or shower shall be in an individual room or enclosure sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for use by a person with a wheelchair.

(c) A toilet room with direct access from the bathing area, shall be provided at each central bathing area.

(d) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from outside in case of an emergency.

(e) A handwashing fixture shall be provided in each toilet room.

(f) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheelchair accessible with wheelchair turning space within the room.

(g) Separate activity areas shall be provided for pediatric and adolescent nursing units.

(4) Child Psychiatric Unit, Guidelines Section 11.3, is modified as follows:

(a) Pediatric and adolescent nursing units shall be physically separated from adult nursing units.

(b) Examination and treatment rooms shall be provided for pediatric and adolescent patients separate from adult rooms.

(i) Each room shall provide a minimum of 100 square feet of usable space exclusive of fixed cabinets, fixtures, and equipment.

(ii) Each room shall contain a work counter, storage facilities, and lavatory equipped for handwashing.

(5) In addition to the service area requirements, individual rooms or a multipurpose room shall be provided for dining, education, and recreation.

(a) Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms.

(b) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(6) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(7) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(8) Linen services shall comply with R432-4-24(7).

R432-7-6. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Linen services, section 11.16.

(2) Parking, Subsection 11.1.C.

R432-7-7. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-8. Specialty Hospital - Chemical Dependency/Substance Abuse Construction.
R432-8-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-8-2. Purpose.

This rule applies to a hospital that chooses to be licensed as a specialty hospital and which has as its major single service the treatment of patients with chemical dependency or substance abuse. The rule identifies the construction standards for a specialty hospital, if the hospital chooses to have a dual major service, e.g., chemical dependency or substance and psychiatric care, then both of the appropriate specialty hospital construction rules apply.

R432-8-3. General Design Requirements.

See R432-4-1 through R432-4-22.

R432-8-4. General Construction, Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors. Corridors in patient use areas shall be a minimum six feet wide.

(2) Door leaf width for patient room doors and doors to patient treatment rooms shall be a minimum three feet.

(3) Ceiling finishes. Ceiling construction in patient and seclusion rooms shall be monolithic.

(4) Bed pan flushing devices are optional.

(5) Windows, in rooms intended for 24-hour occupancy, shall be operable.

(6) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient bedroom;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

(6) Nurse Call System.

(a) A nurse call system is optional.

(b) If a nurse call system is installed, provisions shall be made for the easy removal or covering of call buttons.

R432-8-5. General Construction, Patient Service Facilities.

(1) The requirements of R432-4-24 and the requirements of Chapter 7 including the Appendix of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines. Swing beds must meet Sections 7 and 8 of the Guidelines.

(2) The environment of the nursing unit shall give a feeling of openness with emphasis on natural light and exterior views.

(a) Interior finishes, lighting, and furnishings shall suggest a residential rather than an institutional setting.

(b) Security and safety devices shall be presented in a manner which will not attract or challenge tampering by patients.

(3) Patient rooms.

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.

(b) Minimum patient room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms. The areas listed are minimum and do not prohibit larger rooms.

(c) Patient rooms shall include a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches deep by 36 inches wide, suitable for hanging full-length garments. A break-away clothes rod and adjustable shelf shall be provided.

(d) Visual privacy is not required in all multiple-bed rooms, however privacy curtains shall be provided in five percent of multiple-bed rooms for use in treating detoxification patients.

(4) Laundry facilities shall be available to patients, including an automatic washer and dryer.

(5) Bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each six beds not otherwise served by bathing facilities within individual patient rooms.

(a) Each bathtub or shower shall be in an individual room or enclosure adequately sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with ADAAG for use by a wheelchair patient.

(6) A toilet room with direct access from the bathing area shall be provided at each central bathing area.

(a) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.

(b) A handwashing fixture shall be provided for each toilet in each toilet room.

(c) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheel chair accessible.

(7) There shall be at least one seclusion room for each 24 beds, or a fraction thereof, located for direct nursing staff supervision or equipped with a closed circuit television system with a monitor at the nursing station.

(a) Each seclusion room shall be designed for occupancy by one patient. The room shall have an area of at least 60 square feet and shall be constructed to prevent patient hiding, escape, injury, or suicide.

(b) If a facility has more than one nursing unit, the number of seclusion rooms shall be a function of the total number of beds in the facility.

(c) Seclusion rooms may be grouped in a common area.

(d) Special fixtures and hardware for electrical circuits shall be used to provide safety for the occupant.

(e) Doors shall be 44 inches wide and shall permit staff observation of the patient while providing patient privacy.

(f) Seclusion rooms shall be accessed through an anteroom or vestibule which also provides direct access to toilet rooms. The toilet and anteroom shall be large enough to safely manage the patient.

(g) Seclusion rooms including floor, walls, ceiling, and all openings, shall be protected with not less than one-hour-rated construction.

R432-8-6. Additional Specific Category Requirements.

(1) Dining, Recreation and Day Space. The facility layout shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for all beds in excess of 100.

(a) The facility shall include a minimum of 200 square feet for outpatients and visitors when dining is part of a day care program.

(b) If dining is not part of a day care program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(c) Enclosed storage space for recreation equipment and supplies shall be provided in addition to the requirements of day use.

(2) Recreation and Group Therapy Space. At least two separate social areas, one designed for noisy activities and one designed for quiet activities, shall be provided as follows:

(a) At least 120 square feet shall be provided for each area.

(b) The combined area of the two areas shall be at least 40 square feet per patient.

(c) Activity areas may be utilized for dining activities and may serve more than one adult nursing unit.

(d) Activity areas shall be provided for pediatric and adolescent nursing units which are separate from adult areas.

(e) Space for group therapy shall be provided and activity spaces may be used for group therapy activities.

(3) Examination and treatment rooms shall be provided except when all patient rooms are single-bed rooms.

(a) An examination and treatment room may be shared by multiple nursing units.

(b) If provided, the room shall have a minimum floor area of 110 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum allowable floor dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(4) A consultation room shall be provided.

(a) Rooms shall have a minimum floor space of 100 square feet, and be provided at a room-to-bed ratio of one consultation room for each 12 beds.

(b) They shall be designed for acoustical and visual privacy and constructed using wall construction assemblies with a minimum STC rating of 50.

(c) They shall provide appropriate space for evaluation of patient needs and progress, including work areas for evaluators and work space for patients.

(5) A multipurpose room for staff and patient conferences, education, demonstrations, and consultation, shall be provided.

(a) It shall be separate from required activity areas defined in R432-8-6(2).

(b) If provided in the administration area, it may be utilized for this requirement if it is conveniently accessible from a patient-use corridor.

(6) If child education is provided through facility-based programs, a room shall be provided in the adolescent unit for this purpose. The room shall contain at least 20 square feet per pediatric and adolescent bed, but not less than 250 square feet. Multiple use rooms may be used, but must be available for educational programs on a first priority basis.

(7) Pediatric and adolescent nursing units shall be physically separated from adult nursing units and examination and treatment rooms. In addition to the service requirements of R432-8-7, individual rooms or a multipurpose room shall be provided for dining, education, and recreation. Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms. Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(a) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(b) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

R432-8-7. Exclusions From the Standard.

The following sections of the Guidelines do not apply:

(1) Parking, Section 7.1.D, Subsection 7.2.A4, and 7.2.A.
(2) Infectious Isolation Rooms, Section 7.2.c.
(3) Protective Isolation Rooms, Section 7.2.D.
(4) Seclusion Rooms, Section 7.2.E.
(5) Critical Care Units, Section 7.3.
(6) Newborn Nurseries, Section 7.4.
(7) Pediatric and Adolescent Unit, Section 7.5.
(8) Psychiatric Nursing Unit, Section 7.6.
(9) Surgical Suite, Section 7.7.
(10) Obstetrical Suite, Section 7.8.
(11) Emergency Services, Section 7.9.
(12) Imaging Suite, Section 7.10.
(13) Nuclear Medicine, Section 7.11.
(14) Laboratory Services, Section 7.12.
(15) Renal Dialysis Unit, Section 7.14.
(16) Rehabilitation Therapy Department, Section 7.13.
(17) Respiratory Therapy Services, Section 7.15.
(18) Morgue, Section 7.16.
(19) Pharmacy, Section 7.17.
(20) Linen Services, Section 7.23.

R432-8-8. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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R432. Health, Health Systems Improvement, Licensing.
R432-9. Specialty Hospital - Rehabilitation Construction Rule.
R432-9-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-9-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment of construction standards for rehabilitation hospitals.

R432-9-3. General Design Requirements.

R432-4-1 through 22 apply to this rule.

R432-9-4. General Construction Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors in patient use areas shall be a minimum eight feet wide.

(2) Handrails shall comply with the Americans with Disabilities Act Accessibility Guidelines and located on both sides of hallways and corridors used by patients.

(a) The top of the rail shall be 34-38 inches above the floor, except for areas serving children and other special care areas.

(b) Ends of handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Standards for the Disabled. All fixtures in all toilet and bath rooms, except those in the activities for daily living unit, shall be wheelchair accessible with wheelchair turning space within the room.

(4) Plumbing.

(a) Oxygen and suction systems shall be installed to serve 25 percent of all patient beds.

(b) Installation shall be in accordance with R432-4 and NFPA 99.

(c) Systems serving additional patient beds are optional.

(5) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electrical Code NFPA 70;

(iii) equipment system, as defined in section 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient room;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

R432-9-5. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and the requirements of Section 10 Rehabilitation Facilities and the Appendix of Guidelines for Design and Construction of Hospital and Health Care Facilities (Guidelines) 2001 edition shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Vocational Services Unit, Guidelines section 10.5 is modified to allow psychological services, social services, and vocational services to share the same office space when the licensee provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(3) Nursing Unit, Section 10.15 is modified as follows:

(a) Fixtures in patient rooms shall be wheelchair accessible.

(b) Patient rooms shall contain space for wheelchair storage separate from normal traffic flow areas.

(c) Toilet room doors shall swing out from the toilet room or shall be double acting.

(d) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches by 36 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(4) A clean workroom or clean holding room shall be provided for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(5) A soiled workroom shall be provided containing a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding.

(6) In addition to Guideline Section 10.15.B11, the medicine preparation room or unit shall be under visual control of the nursing staff and have the following:

(a) a minimum area of 50 square feet,

(b) a locking mechanism to prohibit unauthorized access.

(7) Each nursing unit shall have equipment to provide ice for patient treatment and nourishment.

(a) Ice-making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.

(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.

(8) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-9-6. Exclusions from the Guidelines.

The following sections of the Guidelines do not apply:

(1) Waste Processing Services, Subsection 10.11C.

(2) Linen service, Section 10.12.

(3) Patient Rooms section 10.15A.7.

R432-9-7. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities

February 4, 2010	**26-21-5**
Notice of Continuation November 24, 2009	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-31. Life with Dignity Order.
R432-31-1. Authority and Purpose.

(1) This rule is adopted pursuant to Utah Code Title 26, Chapter 21, and Section 75-2a-106.

(2) This rule establishes the forms and systems for Life with Dignity Orders.

R432-31-2. Definitions.

The definitions found in Sections UCA 26-21-2 and 75-2a apply to this rule. In addition, "licensed health care facility" means a facility or entity licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-31-3. Life with Dignity Order Forms.

(1) An individual who desires to execute a Life with Dignity Order must use a form created by the Department. The form may not be altered in layout or style, including font style and size, without the express written permission of the Department.

(2) Any person, health care provider or health care facility may obtain a form from the Department and, if made available by the Department, from a website established for that purpose.

(3) A health care provider, licensed health care facility, or EMS provider may act upon a copy of a Life with Dignity Order as if it were the original.

R432-31-4. Facilities That Must Offer Life with Dignity Orders-Policies and Procedures.

(1) The following health care facilities must comply with Subsection (2):

(a) a general acute hospital licensed under R432-100;

(b) a long-term acute care hospital licensed under R432-104;

(c) a nursing care facility licensed under R432-150;

(d) a mental disease facility licensed under R432-151;

(e) a mental retardation facility licensed under R432-152;

(f) a small health care facility (four to sixteen beds) licensed under R432-200;

(g) an assisted living facility licensed under R432-270;

(h) a small health care facility - type N licensed under R432-300;

(i) a hospice agency licensed under R432-700-750, whether inpatient or home-based;

(j) a critical access hospital licensed under R432-106; and

(k) a home health agency licensed under R432-700.

(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:

(a) the facility determines upon admission whether each individual has a Life with Dignity Order;

(b) the facility determines which of those individuals who do not have a Life With Dignity Order should be offered the opportunity to complete a Life with Dignity Order;

(c) the facility identifies circumstances under which the facility shall review for changes or amendments the Life with Dignity Order for each individual who has one;

(d) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order; and

(e) the facility identifies circumstances under which it would not follow a Life With Dignity Order.

R432-31-5. Facilities Not Required to Offer Life with Dignity Orders-Policies and Procedures.

(1) The following health care facilities must comply with Subsection (2):

(a) a specialty hospital - psychiatric licensed under R432-101;

(b) a specialty hospital - chemical dependency/substance abuse licensed under R432-102 a freestanding ambulatory surgical center licensed under R432-500;

(c) a specialty hospital - rehabilitation licensed under R432-103;

(d) an orthopedic hospital licensed under R432-105;

(e) a birthing center licensed under R432-550;

(f) an abortion clinic licensed under R432-600; and

(g) an end stage renal disease facility licensed under R432-650.

(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:

(a) the facility determines upon admission whether each individual has a Life with Dignity Order;

(b) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order; and

R432-31-6. Training.

Each licensed health care facility shall appropriately train relevant health care, quality improvement, and record keeping staff on the requirements of Title 75, Chapter 2a, the Advance Health Care Directive Act; this rule; and the facility's policies and procedures established pursuant to this rule.

R432-31-7. Transferability of Life with Dignity Orders.

(1)(a) A Life with Dignity Order is fully transferable between all health care facilities.

(b) The health care providers assuming the individual's care at the receiving licensed health care facility shall read the Life with Dignity Order.

(c) The receiving provider must have policies and procedures to address the circumstances under which the provider will not follow the instructions contained in the Life With Dignity Order.

(2)(a) A licensed health care facility that discharges, but does not transfer to another licensed health care facility, an individual who has a Life with Dignity Order, shall provide a copy of the individual's Life with Dignity Order to the individual or, if the individual lacks the capacity to make a health care decision, as defined in section 75-2a-104, to the individual's surrogate.

(b) A licensed health care facility that transfers an individual with a Life with Dignity Order to another licensed health care facility shall provide a copy of the Life with Dignity Order to the receiving licensed health care facility.

(3) A licensed health care facility shall allow an individual to complete, amend, or revoke a Life with Dignity Order at any time upon request.

R432-31-8. Presentation of Life with Dignity Orders to EMS Personnel.

(1) Except for home health agencies and home-based hospice, a licensed health care facility in possession of a Life with Dignity Order must present the individual's Life with Dignity Order to EMS personnel upon the arrival of EMS personnel who are present to treat or transport the individual; and

(2) For an individual who resides at home, if home health agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel must present the individual's Life with Dignity Order, upon the arrival of the EMS personnel who are present to treat or transport the individual.

R432-31-9. Home Placement of Life with Dignity Orders.

(1) If an individual under the care of a home health agency or a hospice agency possesses a Life with Dignity Order, the

agency must ensure that a copy of the Life with Dignity Order is left at the individual's place of residence.

(2) For an individual adult who resides at home, including an emancipated minor, it is recommended that a copy of the Life with Dignity Order be posted on the front of the refrigerator or over the individual's bed.

(3) For a minor who resides at home, it is recommended that a copy of the Life with Dignity Order be placed in a tube and placed on the top shelf of the door of the refrigerator.

R432-31-10. Life with Dignity Bracelets and Necklaces.

(1) The Department may contract with a vendor or vendors to provide an approved Life with Dignity bracelet or necklace.

(2) An individual with a Life with Dignity Order may obtain an approved Life with Dignity bracelet or necklace from a vendor approved by the Department. The approved Life with Dignity bracelet or necklace identifies the individual to EMS or other health care providers as possessing a Life with Dignity Order.

R432-31-11. Prior Orders and Out of State Orders.

(1) EMS and other health care providers may recognize as valid all POLST, Life With Dignity and EMS/DNR orders, including bracelets and necklaces, unless superseded by a subsequent Life with Dignity Order or POLST.

(2) Licensed health care facilities must ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders to comply with current rule requirements by January 31, 2011.

(3) Physicians may complete and sign new Life With Dignity Orders for individuals with prior forms who no longer have capacity to complete new orders, and who do not have a surrogate/guardian to authorize the new order. The physician must indicate on the new order that the individual's preferences from the prior order are still applicable.

(4) A form that an individual executed while in another state may be honored as if it were executed in compliance with this rule and Section 75-2a-106 if it:

(a) is substantially similar to a Life with Dignity Order or a Physician's Order for Life Sustaining Treatment; and

(b) was executed according to the laws of that state.

KEY: POLST, do not resuscitate, Life with Dignity Order
February 25, 2010 26-21
Notice of Continuation November 21, 2007 75-2a-106

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all leave benefits, unless the employee is in a position specifically designated as ineligible for leave benefits. An employee in a position which normally requires working less than 40 hours per pay period is ineligible for leave benefits.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, converted sick, compensatory, excess or holiday leave before accrued.

(5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

(6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(7) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked.

(i) No leave on leave may accrue or be paid on the cashed out leave.

(ii) Only leave without pay or administrative leave may be used after the last day worked.

(6) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Veterans' Day -- November 11

(i) Thanksgiving Day -- fourth Thursday of November

(j) Christmas Day -- December 25

(k) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed nine hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

(a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first ten hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Sick leave may be granted for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse, children or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence.

(6) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(7) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(b) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be Program II converted sick leave hours.

(2) To be eligible, an employee must have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(c) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(4)(b) if the converted sick leave was accrued in Program II.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued after January 1, 2006 shall be Program II sick leave hours.

(2) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(3) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) Continuing health and life insurance.

(i) The employing agency shall provide the same health and life insurance benefits as provided to current employees until the employee reaches the age eligible for Medicare or up to the following number of years, whichever comes first.

(A) two years if the employee retires during calendar year 2009;

(B) one year if the employee retires during calendar year 2010; or

(C) zero years if the employee retires after calendar year 2010.

(ii) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(iii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iv) The retiree shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(b) 25% of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, an additional amount shall be deducted from the employees remaining Program I sick leave balance as follows.

(A) 192 hours if the employee retires during calendar year 2009;

(B) 96 hours if the employee retires during calendar year 2010; or

(C) zero hours if the employee retires after calendar year 2010.

(D) The remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(4)(b)(i) shall be used to provide the following benefit.

(i) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until he reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(ii) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(iv) When the spouse reaches the age eligible for

Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(4)(b)(ii) shall be deposited in the employees PEHP health reimbursement account at the greater of:

(i) the employees rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) student educational assistance.

(e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.

(i) The employee must:

(A) have fewer than three total hours off the job between the time the polls open and close, and;

(B) apply for the time in the previous 24 hours.

(ii) Management may specify the hours when the employee may be absent.

(f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(2) With the exception of administrative leave used as a reward, under Subsection R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

(3) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-1.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(i) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave he would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(b) The employee shall be entitled to previously accrued annual and sick leave.

(c) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law.

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.

(c) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.

(d) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(e) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted block, reduced schedule, or intermittent leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than six months from the last day worked in the employee's regular position. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled. Exceptions may be granted by the agency head.

(c) Except as otherwise provided under the Family Medical Leave Act, an employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entitrely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An employee is entitled to 12 weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, dependent child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is entitled to 26 weeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee must:

(a) be employed by the state for at least one year;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave without pay for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Employees on FMLA may not work a second job without written consent of the agency head.

(14) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for six months;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(a) If an employee has applied for LTD and is determined eligible, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(4) If the employee is able to return to work within six months of the last day worked in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within six months of the last day worked in the employee's regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law.

(6) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(7) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) shall be granted up to six months of medical leave without pay, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position.

(a) The medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a waiting period before benefit payments begin.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability

program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to six months after the last day worked in the employee's regular position, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14(2)(c)(i).

(2) An employee shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work within six months of the last day worked in the employee's regular position, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) If an employee is unable to return to work within six months after the last day worked in the employee's regular position, the employee shall be separated from state employment unless prohibited by state or federal law.

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

R477-7-18. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(5) Employees on FMLA may not work a second job without written consent of the agency head.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

February 8, 2010	**34-43-103**
Notice of Continuation June 29, 2007	**49-9-203**
	63G-1-301
	67-19-6
	67-19-12.9
	67-19-14
	67-19-14.2
	67-19-14.4

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

(2) The purpose of this rule is to provide information to parents relating to the establishment and enforcement of child support when a child is placed in an out-of-home program. In addition, the rule explains when a child support amount may deviate from the Utah Child Support Guidelines.

R495-879-2. Child Support Liability.

The Office of Recovery Services will establish and enforce child support obligations against parents whose children are in out-of-home placement programs, administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Title 78B, Chapter 12; Child Support Services Act, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78A-6-1106.

R495-879-3. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Sections 78B-12-201, 78B-12-203 through 78B-12-218, 78B-12-301, 78B-12-302, and 78B-12-401 through 78B-12-403.

R495-879-4. Criteria For Deviating From Guidelines.

The following criteria may be used to deviate from the guidelines when a prior order does not exist.

(1) Deduction For a Disabled Child. A deduction from gross income shall be allowed each year, equal to the federal tax exemption for dependents, for each year a child was cared for at home if that child's disability would ordinarily have qualified him for residential care.

(2) Medical Payments. A deduction from gross income shall be allowed for medical expenses equal to the IRS deduction allowed the previous year on the parents' 1040 tax return.

(3) Loss of child's Social Security Survivor Payments. If the parent's income is below 133% of the poverty level, allow a direct credit against the child support amount from the child's social security survivor's benefit paid to the state.

(4) Adoption Assistance. The child is adopted, the parents continue to receive adoption assistance or have received adoption assistance, and the child is placed in the care or custody of the state for reasons other than neglect or abuse of the child by the parents.

(5) Best Interest of the Child. It is in the best interest of the child to deviate from the child support guidelines pursuant to Section 78B-12-301 through 78B-12-302.

R495-879-5. Establishing an Order.

ORS may modify and establish child support orders through the Child Support Services Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63G-4-102 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Subsection 78A-6-104; and in accordance with R527-200.

R495-879-6. Good Cause Deferral and Waiver Request.

(1) If collections interfere with family re-unification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments once a support order has been established. The request may be applied to current support when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments. The request shall be initiated by the responsible case worker and forwarded to his or her supervisor, regional director, division director/superintendent, or designee for approval.

(2) After a support order has been established, the Good Cause Deferral and Waiver request may be denied or approved by the referring agency at any stage in the process. Once the waiver has been approved at all levels in the referring agency, the division director (or designee) shall send the waiver to the ORS director (or designee) for review and decision. If the requesting agency disagrees with the ORS director's (or designee's) decision, the request may be referred to the Executive Director of the Department of Human Services for a final decision. The requesting agency will notify the family of the final decision. The request shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-7. In-Kind Support.

(1) ORS may accept in-kind support after the support amount has been established, based on the parent's service to the program in which the child is placed. The service provided by a parent must be approved by the director of the division or the superintendent of the institution responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. If geographical distances prohibit direct service, then the division director or superintendent may approve support services for in-kind support that do not directly offset costs to the agency, but support the overall mission of the agency. For example, a parent with a child receiving services at the Utah State Hospital (USH) may provide services to a local mental health center with the approval of the USH superintendent.

(2) A memorandum of understanding shall be signed by the division/institution and the parent specifying the type, length, and dollar value of service. Verification of the service hours worked must be provided by the division/institution to ORS (using Form 603) within 10 days after the end of the month in which the service was performed. The verification shall include the dates the service was performed, the number of hours worked, and the total credit amount earned. The in-kind service allowed shall be applied prospectively up to the current support ordered amount. Unless approved by the director of the Department, in-kind support approved by one division/institution shall not be used to reduce child support owed to another division/institution. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-8. Extended Visitation During The Year.

A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.

R495-879-9. Child Support and Adoption Assistance.

ORS will establish and enforce child support obligations for parents who are currently receiving adoption assistance or who have received adoption assistance from this state or any other state or jurisdiction, for children who are in the custody of the state, in accordance with Sections 78A-6-1106, 78B-12-106, R495-879-2 and R527-550-1. If an order for support does not currently exist, the department will establish a monthly child support obligation prospectively on existing cases. When

establishing a child support obligation, ORS will not include the adoption assistance amount paid to the family in determining the family's income, pursuant to Section 78B-12-207.

KEY: child support, custody of children
February 23, 2010 **62A-1-111(16)**
Notice of Continuation October 23, 2008 **62A-4a-114**
62A-5-109(1)
62A-11-302
62A-15-607
63G-4-102
78A-6-104
78A-6-1106
78B-12-106
78B-12-201
78B-12-203 through 78B-12-218
78B-12-301
78B-12-302
78B-12-401 through 78B-12-403

R512. Human Services, Child and Family Services.
R512-10. Youth Mentor Program.
R512-10-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for a Youth Mentor Program.

(2) This rule is authorized by Section 62A-4a-102.

R512-10-2. Definition.

(1) Level One: The Youth Mentor Program is an advocacy service for youth and families which provides support and socialization activities, and assists in building self-esteem of youth who are at risk of or have been neglected or abused or who are ungovernable.

(2) Level Two: In areas of the state where parent education programs do not exist, the youth mentor funds may pay for parent education services. The parent education services would be used for the purpose of working with a parent(s) who is lacking in parenting, socialization, and homemaking skills.

(3) Level Three: This level of the Youth Mentor Program is characterized by providing intensive services to youth who may be seriously out of control, may have serious behavioral or emotional problems, may be substance abusers, may be preparing for independent living, or may require stringent costly out-of-home placements if less restrictive interventions are not provided. Intensive youth mentors provide one-on-one intensive supervision that may include assistance to the out-of-home provider in monitoring of behavior, basic living skills training, crisis intervention, as well as linkage to educational, vocational, employment, and recreational services.

R512-10-3. Conditions for Approval.

(1) The youth mentor shall meet the following standards:

(a) The youth mentor shall submit fingerprints to be cleared through the Bureau of Criminal Investigation (BCI) as authorized by Section 62A-4a-202.4. This check must show that the applicant has not been convicted of a felony or certain misdemeanors, which may have an impact in working with children. The Child and Family Services database (USSDS or SAFE) shall be checked for any occurrences of child abuse. If the applicant has a substantiated child abuse report, this information, along with other information, will be taken into consideration during the application process.

(b) The youth mentor will receive a copy of the Department of Human Services "Code of Conduct" and will act accordingly. A signed copy of the Statement of Understanding will be included in the youth mentor's file.

(c) The youth mentor will sign a Motor Vehicle Insurance Certification form in which the youth mentor will certify that no-fault property damage and liability coverage insurance will be maintained on any automobile used in the program.

(d) Compliance with these standards will be monitored by Child and Family Services' regional staff and/or the youth mentor coordinator, based on interviews, collateral contacts, and other appropriate documentation.

R512-10-4. Characteristics and Requirements of Youth Mentor.

(a) The youth mentor shall not discriminate against the youth because of race, color, national origin, sex, religion, or handicap. The youth mentor shall respect the religious and cultural practices of the youth.

(b) The youth mentor shall have the physical health necessary to perform the responsibilities of the position.

(c) The youth mentor shall have no unresolved emotional or mental health needs which impede the youth mentor in performing the responsibilities of the position.

(d) The youth mentor shall be 21 years of age or older.

(e) While working with youth, the youth mentor shall demonstrate maturity, flexibility, the ability to modify expectations and attitudes, and the ability to accept and respond to the needs of youth.

(f) The youth mentor shall respect the relationship the youth has with the natural parents and Child and Family Services, and shall encourage those relationships.

(g) The youth mentor shall have experience fostering the development of children or shall have the personal characteristics and temperament suited to working with children.

(h) The youth mentor shall not be dependent on the youth mentor payments as the primary source of household income.

(i) A Child and Family Services employee shall not be approved as a youth mentor.

(j) The youth mentor shall not be on probation, parole, or under indictment for a criminal offense, and shall have no history of crimes involving youth.

(k) The youth mentor shall work cooperatively with Child and Family Services, the Juvenile Court, the Guardian ad Litem, the Attorney General, and law enforcement officials as authorized by the supervising caseworker.

(l) The youth mentor shall understand and abide by the requirements that information must be kept confidential.

(m) The youth mentor shall notify the caseworker and guardian of concerns.

(n) The youth mentor shall be trained to provide for the needs of the youth they work with. The training shall be approved by Child and Family Services and may be provided by the youth mentor coordinator or by other educational or social agencies in the community.

(o) The youth mentor shall not use any type of corporal punishment in working with youth. Infliction of bodily pain, discomfort, or degrading/humiliating punishment shall be prohibited.

R512-10-5. Revocation of the Youth Mentor Agreement.

(1) Child and Family Services may revoke certification upon any of the following grounds:

(a) Violation of standards, agreement conditions, or the Department of Human Services Code of Conduct.

(b) Conduct in the provision of service that is or may be harmful to the health or safety of persons receiving the service.

(2) If the above conditions exist, the immediate suspension or revocation of the Youth Mentor Agreement shall be ordered. Written notice shall be sent to the youth mentor and shall contain a statement of the basis for the order. The letter must also inform the youth mentor of the right and procedure to request a reconsideration of the action.

KEY: child welfare, youth advocate
February 9, 2010 62A-4a-102
Notice of Continuation January 3, 2007 62A-4a-106

R512. Human Services, Child and Family Services.
R512-31. Foster Parent Due Process.
R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-2. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home if the foster parent disagrees with the decision, except if the child is being returned to the natural parent.

R512-31-3. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication and by Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the foster parent conflict resolution procedure, and notice regarding the ability of the foster parent to petition the juvenile court directly if the child has been in the foster home for 12 months or longer in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the regional director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Subsection 62A-4a-206(2)(b)(ii).

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The Administrative Law Judge shall determine if Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Subsection 62A-4a-206(2)(c).

KEY: child welfare, foster care, due process

February 9, 2010	**62A-41-102**
Notice of Continuation August 7, 2007	**62A-4a-105**
	62A-4a-206
	63G-4-201
	78A-6-318

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102.

R512-42-2. Adoption by Relatives.

(1) A relative who has a relationship with a child available for adoption may apply to adopt a particular child. The application and home study will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with Section 78B-6-128, based upon the best interest of the child.

KEY: adoption

February 9, 2010	**62A-4a-102**
Notice of Continuation August 7, 2007	**78A-6-307**
	78B-6-102
	78B-6-117
	78B-6-128
	78B-6-137

R523. Human Services, Substance Abuse and Mental Health.
R523-1. Procedures.
R523-1-1. Authority.

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Subsection 62A-15-105(5).

R523-1-2. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for rulemaking by the division;

(b) clarification of the relationship between the division and the local authorities;

(c) program standards for community mental health programs;

(d) a process for local authorities to set fees for service;

(e) a priority for treatment in community mental health centers;

(f) guidance on carryover from funds generated through collections by community mental health centers;

(g) a list of consumer rights;

(h) guidance in the use of division local authority data for evaluations, research and statistical analysis;

(i) allocation of Utah State Hospital adult beds to local mental heath authorities;

(j) standards for designated examiner certifications;

(k) distribution formulas for the appropriation of funds to the local substance abuse and mental health authorities;

(l) allocation of Utah State Hospital child and youth beds to local mental heath authorities;

(m) procedures for administering antipsychotic medications to children;

(n) procedures for administering electroshock therapy to children;

(o) clarification of items prohibited from public mental health facilities;

(p) guidance on the use of family involvement in therapeutic settings;

(q) guidance for the use of a declaration of mental health treatment;

(r) standards for case manager certification;

(s) set a competitive bid process for contract and subcontracts;

(t) set maintenance of effort standards for local substance abuse authorities;

(u) set the distribution of Fee-On-Fine (DUI) funds; and

(v) clarify the 20% match required by the counties on general funds passed through to the local authorities.

R523-1-3. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health (Division) to provide comprehensive mental health services as defined by state law pursuant to Section 17-43-302.

(2) When the Division requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA.

(3) The Division has the responsibility and authority to monitor LMHA contracts. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

(4) The Division shall oversee the continuity of care for services provided to consumers and resolve conflicts between the Utah State Hospital (USH) and LMHA, and also those between LMHA's.

(a) if negotiations between LMHA's and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the local mental health center and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the community mental health center director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHA's regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-1-5. Fee for Service.

(1) Each local authority:

(a) Shall require all programs that receive federal and state funds from the Division of Substance Abuse and Mental Health (Division) and provide services to clients to establish a policy to set and collect fees.

(i) Each fee policy shall include:

(A) a fee reduction plan based on the client's ability to pay for services; and

(B) a provision that clients who have received an assessment and require mental health treatment or substance abuse services will not be denied services based on the lack of ability to pay.

(ii) Any adjustments to the assessed fee shall follow the procedures approved by the local authority.

(b) Shall approve the fee policy; and

(c) Shall set a usual and customary rate for services rendered.

(2) All programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(3) All clients shall be assessed fees based on:

(a) the usual and customary rate established by the local authorities, or

(b) a negotiated contracted cost of services rendered to clients.

(4) Fees assessed to clients shall not exceed the average cost of delivering the service.

(5) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the local authority.

(6) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(7) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(8) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.

R523-1-6. Priorities for Treatment.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

(2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

(c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

(1) Local center programs may carry collections forward from one fiscal year to another.

(2) Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the center.

R523-1-8. Consumers Rights.

(1) Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-611(2)(a), the Division of Substance Abuse and Mental Health herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).

2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area: and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.

3. The Division hereby establishes a formula to determine adult bed allocation:

a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.

b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric means age 65 and older.

c. Adult and Geriatric population numbers are identified for each county.

d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.

ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.

iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.

e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.

f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

h. At least one adult (18 - 64) bed is allocated to each community mental health center.

4. In accordance with UCA 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

5. Applying the formula.

a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

b. The Division of Substance Abuse and Mental Health, is responsible to calculate adult bed allocation.

c. Each local mental health authority will be notified of changes in adult bed allocation.

6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-12. Program Standards.

(1) The Division of Substance Abuse and Mental Health establishes by rule, minimum standards for community mental health programs.

(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

(ii) Designate the projected use of state and federal contracted dollars,

(iii) Define the Center's priorities for service and the population to be served.

(c) Each Center shall provide or arrange for the provision of services within the following continuum of care:

(i) Inpatient care and services (hospitalization),

(ii) Residential care and services,

(iii) Day treatment and Psycho-social rehabilitation,

(iv) Outpatient care and services,

(v) Twenty-four hour crisis care and services,

(vi) Psychotropic mediation management,

(vii) Case management services,

(viii) Community supports including in-home services, housing, family support services and respite services,

(ix) Consultation, education and preventive services, including case consultation, collaboration with other county service agencies, public education and public information,

(x) Services to persons incarcerated in a county jail or other county correctional facility.

(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.

(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided,

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-14. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Division establishes by rule a formula for the annual allocation of funds to local substance abuse and mental health authorities through contracts.

(2) The funding formula for mental health services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) The funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan.

(e) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

(3) The funding formula for substance abuse services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local substance abuse authorities.

(a) Up to 15% of the purchase of service funds may be allocated by the State Division of Substance Abuse and Mental Health for statewide services; the remaining 85% of these funds will be allocated to the Local Substance Abuse Authorities as follows:

(i) Rural counties (all counties in the state except Utah, Salt Lake, Davis, and Weber) shall be allocated a rural differential of $11,600;

(ii) Sixty percent of the remaining funds will be allocated to each county based on the need factor derived from the Incidence and Prevalence Studies;

(iii) The remaining forty percent of the funds will be allocated to each county based on the county's percent of the General Population as estimated by the Utah Office of Planning and Budget;

(b) Cost of Living Adjustments shall be determined by the State Division of Substance Abuse and Mental Health in accordance with legislative appropriations.

(c) Funds approved for a local authority, based on the funding formula, belong to that authority. In the event that there is an unexpended amount at the end of the year, the local authority will be allowed to carry these unexpended funds over into the next contract period, provided that the Division can carry the funds over. The only exception to this carryover authority will be that if the unexpended funds cause the state to not meet the statewide set-aside requirements. The division will contract these unexpended funds to other local authorities who can provide the services to fulfill the set-aside requirements. The division shall monitor the fund balances and the set-aside spending throughout the year. The decision to transfer funds will be negotiated in March of each year with any local authority that will not expend all of their funds.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

(1) The Division establishes, by rule, a formula to allocate to local mental health authorities pediatric beds.

(2) The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

(3) Each community mental health center shall be allocated at least one pediatric bed.

(4) The formula to determined pediatric bed allocation:

(a) The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

(b) The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

(c) Pediatric population figures are identified for each county.

(d) The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

(e) Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(5) The Division shall periodically review and make changes in the formula as necessary.

(6) Applying the formula.

(a) Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

(b) Each local mental health authority shall be notified of changes in pediatric bed allocation.

(7) The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

(8) A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-17. Medication Procedures for Children, Legal Authority.

(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication.

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.

(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and parent/legal guardian/legal custodian give consent.

(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended treatment.

(vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

(i) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief (including a statement of the child's behaviors).

(C) The medication administered.

(D) The date and time the medication was begun.

(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

(m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation

and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

(p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

(q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy.

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:

(b) ECT means electroconvulsive therapy.

(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.

(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered

(v) The possible side effects, if any, of the recommended treatment

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.

(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either

(A) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

(q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

(s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

(t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

(1) Each mental heath authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

(2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits.

R523-1-21. Declaration for Mental Health Treatment.

(1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

(2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

R523-1-23. Case Manager Certification.

(1) Definitions.

(a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed by the local mental health authority or contracted by a local substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

(b) "Qualified providers" include any individual who is a

licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed professional counselor, licensed marriage and family counselor, or a licensed. substance abuse counselor, and employed by a local mental health authority or contracted by a local mental health authority.

(2) A certified case manager must meet the following minimum standards:

(a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-1-23(1)(b);

(b) be at least 18 years of age;

(c) have at least a high school degree or a GED;

(d) have at least two years experience in the support of individuals with mental illness or substance abuse;

(e) be employed by the local mental health authority or contracted by a local substance abuse authority;

(f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(g) completes an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-1-23(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issues a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 60 days of completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health or substance abuse topics.

(a) A certified case manager shall submit CEU documentation to the Division when they apply for recertification.

(b) Documents to verify CEU credits include:

(i) a certificate of completion documenting continuing education validation furnished by the presenter:

(ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall submit the Request for Re-certification and documentation of 24 hours of CEU's 30 days prior to the date of expiration on the initial certificate or re-certification. Failure to submit the Request for Re-certification will result in automatic revocation of the certificate.

(7) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Subsection R495-876(a), the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(8) If a certified case manager fails to complete the requirements for CEU's, their certificate will be revoked or allowed to expire and will not be renewed.

(9) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times with a twelve-month period.

(10) The case managers certification must be posted and available upon request.

R523-1-24. Distribution of Fee-On-Fine (DUI) Funds.

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in R523-1-15. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the local authority's governing board to send the funds to the local service provider.

R523-1-25. 20% Match Required to Be County Tax Revenue.

(1) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

(2) Failure by any county to meet its obligations under this requirement shall result in the amount of State General Funds allocated to that county by formula as described in R523-1-15 being lowered by the percent by which the county under-matches these funds.

KEY: bed allocations, due process, prohibited items and devices, fees

December 29, 2009 **17-43-302**
Notice of Continuation March 31, 2008 **62A-15-103**
62A-15-105(5)
62A-15-603
62A-15-612
62A-15-108
62A-15-704(3)(a)(i)
62A-15-704(3)(a)(ii)
62A-15-713(7)
62A-15-1003
17-43-204
17-43-301(4)(a)(x)
17-43-306

R527. Human Services, Recovery Services.
R527-35. Non-IV-A Fee Schedule.
R527-35-1. Authority and Purpose.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

2. The purpose of this rule is to provide information regarding the ORS/CSS fee schedule for Non-IV-A cases which is authorized by Federal Regulations found at 45 CFR 302.33. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

R527-35-2. Non-IV-A Fee Schedule.

Pursuant to 45 CFR 302.33 (2008) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of $122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20.00. This fee is waived if the case was closed within the last 12 months for the reason CTF (cannot find the non-custodial parent) or AFC (non-custodial parent lives in a foreign jurisdication);

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. an administrative fee of $5.00 per payment processed, not to exceed $10.00 per month;

4. a fee of $25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is $50.00 or more. If the refund is more than $25.00 but less than $50.00, the fee is the refund amount minus $25.00;

5. the Child Support Lien Network (CSLN) fee of $52.00, to be paid at the time the levy is processed.

KEY: child support
February 23, 2010 45 CFR 302.33
Notice of Continuation January 16, 2007 62A-11-107

R527. Human Services, Recovery Services.
R527-332. Unreimbursed Assistance Calculation.
R527-332-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to meet the requirements of 45 CFR 302.32 and 45 CFR 302.51, which require the office to refund collections in excess of the unreimbursed assistance amount (URA) to the family within two calendar days of the end of each month that assistance was received.

R527-332-2. Definitions.

1. IV-A Assistance means cash assistance which was issued based upon Title IV-A funding of AFDC or FEP programs.

2. Unreimbursed Assistance means the total lifetime amount of IV-A assistance that the State has expended on behalf of the IV-A household for which the State/Federal government have not been reimbursed.

R527-332-3. Unreimbursed Assistance Calculation.

The Office of Recovery Services shall calculate the amount of unreimbursed assistance. The calculation shall compare the amount of IV-A child support payments plus the amount of IV-A overpayment payments against the lifetime IV-A benefit amount.

In the event that the unreimbursed assistance amount becomes zero, or greater than zero, collection of the IV-A overpayment amount will be suspended.

KEY: assistance, overpayments, child support

February 9, 2010	**62A-1-111**
Notice of Continuation December 3, 2009	**62A-11-107**
	45 CFR 302.32
	45 CFR 302.51

R527. Human Services, Recovery Services.
R527-412. Intercept of Unemployment Compensation.
R527-412-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to define the conditions under which the Office of Recovery Services may collect child support from unemployment compensation and the legal limitations on those amounts.

R527-412-2. Intercept of Unemployment Compensation.

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation

February 9, 2010	**35A-4-103(5)**
Notice of Continuation September 5, 2007	**62A-1-111**
	62A-11-107
	62A-11-401

R590. Insurance, Administration.
R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs.
R590-140-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Subsections 31A-2-201(1) and 31A-2-201(3)(a) to adopt rules for the implementation of the Utah Insurance Code.

R590-140-2. Purpose.

Pursuant to 31A-19a-205, rate filings made by individual insurers in compliance with the requirements of Section 31A-19a-203 may include rates, pure premium rates and supplementary information prepared by a rate service organization. The purpose of this rule is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of Section 31A-19a-203 as to the rate and supplementary rate information filings of property and casualty insurers that refer to and incorporate, in whole or in part, prospective loss costs filings made by rate service organizations.

R590-140-3. Applicability and Scope.

This rule applies to the types of insurance described in Section 31A-19a-101 and to insurers making filings under Section 31A-19a-203 subject to any exemptions the commissioner may order pursuant to Section 31A-19a-103.

R590-140-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, and Section 31A-19a-102 in addition to the following:

"Reference filing" means a filing of prospective loss costs, supporting information, or both, made by a licensed rate service organization. An insurer that subscribes to the rate service organization may refer to or incorporate elements of reference filings in its own filings.

R590-140-5. Filings of Advisory Prospective Loss Costs and Adjustment Factors.

(1) A rate service organization may develop and make reference filings containing advisory prospective loss costs. The reference filing must:

(a) contain the statistical data and supporting information for the calculations or assumptions underlying those prospective loss costs; and

(b) be filed and effective in the same manner as rates filed pursuant to Section 31A-19a-203.

(2) An insurer may make a filing of rates by:

(a) becoming a participating insurer of a licensed rate service organization that makes reference filings of advisory prospective loss costs;

(b) authorizing the commissioner to accept reference filings on its behalf; and

(c) filing with the commissioner the information required in Section R590-140-6.

(3) If an insurer chooses the procedure outlined in Subsection (2) above, the insurer's rates shall be:

(a) the prospective loss costs filed by the rate service organization pursuant to Subsection (1); and

(b) any adjustment to the prospective loss costs filed as required by Section R590-140-6 that are in effect for that insurer.

(4) The filing of an adjustment to the prospective loss costs by an insurer shall become effective in accordance with the provisions of Section 31A-19a-203 that apply to the filing of rates.

R590-140-6. Required Filing Documents.

A filing by an insurer that refers to a reference filing of prospective loss costs made by a rate service organization must include the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable. Samples of these forms are available from the Utah Insurance Department.

R590-140-7. Supplementary Rate Information.

(1) A rate service organization may develop and make filings of supplementary rate information. These filings shall be made in accordance with Sections 31A-19a-203 and 31A-19a-205.

(2) An insurer may make a filing of supplementary rate information by:

(a) becoming a participating insurer of a licensed rate service organization; and

(b) authorizing the commissioner to accept a filing by the organization on behalf of the insurer.

(3) Except for any modification filed by the insurer, the supplementary rate information of the insurer must be the same as that filed by the rate service organization.

R590-140-8. Filing of Rate and Manual Pages.

(1) If the final rates of an insurer are determined solely by applying its adjustment, as presented in the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable, to the prospective loss costs that are contained in the reference filing and printed in the rating manual of the rate service organization, the insurer is not required to develop or file its final rate pages with the commissioner.

(2) If an insurer prints and distributes final rate pages for its own use and the rates are based on the application of its filed adjustments to the prospective loss costs of a rate service organization, the insurer must file those pages with the commissioner.

(3) If a rate service organization does not print prospective loss costs in its rating manual, the insurer must submit its rates to the commissioner.

(4) If a rate service organization does not file certain premium elements, such as minimum premiums, these must be filed by the insurer.

R590-140-9. Existing Rates and Deviations.

(1) Nothing in these procedures shall be construed to require a rate service organization or its participating insurers to refile rates previously filed with the commissioner.

(2) A participating insurer of a rate service organization may continue to use all rates and deviations currently filed for its use until the insurer makes its own filing to change its rates by making an independent filing or by filing the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable that adopts the prospective loss costs of a rate service organization or an adjustment to the prospective loss costs by the insurer.

(3) In order that the commissioner may verify the rates being used, the insurer is required to maintain documentation demonstrating that the rates and deviations being used by the insurer have been filed with the commissioner. These documents must be produced at the request of the commissioner. Failure or refusal to do so may subject the insurer to sanctions pursuant to 31A-2-308.

R590-140-10. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, its invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are

declared to be severable.

KEY: insurance
June 8, 2000 **31A-2-201**
Notice of Continuation February 23, 2010

R590. Insurance, Administration.
R590-166. Home Protection Service Contract Rule.
R590-166-1. Authority.

This rule is issued by the Insurance Commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-6a-110(1) and (2).

R590-166-2. Purpose and Scope.

The purpose of this rule is to establish certain exemptions from the requirements of Chapter 6a of Title 31A as it relates to home protection companies as defined herein.

R590-166-3. Definition.

A. "Home protection service contract," also referred to as "home service contract" or "home warranty," means a service contract as defined by Subsection 31A-6a-101(3)(a) whereby a person, other than a builder, seller, or lessor of a home which is the subject of the contract, undertakes, for a specified period of time and for a predetermined fee, to repair or replace components, systems, or appliances of such home upon mechanical or operational failure, or to make indemnification to the holder of such contract for such repair or replacement.

B. "Home protection company" means a service contract provider as defined by 31A-6a-101(5) who issues home protection service contracts, excluding insurers authorized for casualty insurance.

R590-166-4. Rule.

A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A-6a-103(1)(a) and (b), and 31A-6a-103(2)(b)(iv) and the requirements of Subsections 31A-6a-104(1)(a) and (b), and 31A-6a-104(2)(a)(ii); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto as would otherwise be required pursuant to Subsections 31A-6a-103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule.

B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A-2-206 an amount not less than $10,000 for each 500 home protection service contracts in force in this state, but not to exceed $100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract-holders from funds held on deposit.

C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for $50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of the surety bond or letter of credit shall be increased to $100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.

D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.

E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.

R590-166-5. Annual Statements, Interim Reports.

A. A home protection company electing to be subject to this rule shall annually, within 90 days after the close of its fiscal year, file with the commissioner its annual statement in a form prescribed by the commissioner. Such annual statement shall include a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant, and verified by the home protection company's president and principal financial or accounting officer.

B. Each annual statement shall also report the home protection company's volume of business in this state during the preceding fiscal year, the losses thereon, open depositories at year end, and a statement of assets and liabilities.

C. A home protection company which fails to file its annual statement in the form and within the time provided in this rule may be fined $500 for each month, or any part thereof, during which such delinquency continues, and upon notice by the commissioner, its election to be subject to this rule may be suspended or revoked until such delinquency is cured to the satisfaction of the commissioner.

D. In addition to an annual statement, the commissioner may require of any particular home protection company, in any situation where that home protection company's ability to service its obligations to holders or creditors is in reasonable doubt, such additional regular or special reports as the commissioner may deem necessary.

R590-166-6. Severability.

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.

KEY: insurance
January 24, 2006 **31A-2-201**
Notice of Continuation April 15, 2009 **31A-6a-110**

R590. Insurance, Administration.
R590-220. Submission of Accident and Health Insurance Filings.
R590-220-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Section 31A-2-201.1 and Subsections 31A-2-201(3), 31A-2-202(2), 31A-22-605(4), 31A-22-620(3)(f), and 31A-30-106(1)(i) and (k).

R590-220-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) accident and health filings required by Section 31A-21-201;

(b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;

(c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;

(d) long term care filings required by Section 31A-22-1404 and Rule R590-148;

(e) basic health care plan filings required by Section 31A-22-613.5 and Rule R590-175; and

(f) health benefit plan filings required by Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Rule R590-167.

(2) This rule applies to:

(a) all types of accident and health insurance products; and

(b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-220-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," effective July 1, 2009, is hereby incorporated by reference and is available on the department's web site, www.insurance.utah.gov.

R590-220-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(1)(b).

(3) "Electronic filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(4) "Eligible group" means a group that meets the definition in Subsection 31A-22-701(1)(a).

(5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(7) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.

(8) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate, rate manual, or rate methodologies;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement or rider;

(k) an actuarial memorandum, demonstration, and certification;

(l) a licensee annual statement;

(m) a licensee renewal application; or

(n) an advertisement.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rating methodology change" for the purpose of a health benefit plan means a:

(a) change in the number of case characteristics used by a covered licensee to determine premium rates for health benefit plans in a class of business;

(b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) change in the method of allocating expenses among health benefit plans in a class of business; or

(d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered licensee changes rating factors with respect to more than one case characteristic in a 12-month period, the licensee shall consider the cumulative effect of all such changes in applying the 10% test.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.

R590-220-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent,

complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer shall include a description of the filing corrections.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description and include a description of the filing corrections.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-220-16 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-220-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filing must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4)(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed, signed, and attached to the Supporting Documentation tab. A false certification may subject the licensee to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire; or

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Variable data.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(g) Utah Accident and Health Insurance Intake Survey.

(i) The intake survey must be properly completed, signed and attached to the Supporting Documentation tab for filings submitted with the type of insurance of "H15G," "H15I," "H16G," "H16I," "HOrg02G," or "HOrg02I."

(ii) If the intake survey is incomplete or not attached, the filing will be rejected.

(h) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule.

(i) Reports are exempt from the filing submission

requirement listed in Subsections R590-220-6(4)(c), (d), (f) and (g).

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-220-7. Procedures for Form Filings.

(1) Forms in General.

(a) Forms are File and Use filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(d) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filing.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, outline of coverage, certificate, rider, endorsement, and actuarial memorandum.

(c) Only one policy filing for a single type of insurance may be filed, except as stated in Subsection R590-220-7(3)(d).

(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through N.

(4) Rider or Endorsement Only Filing.

(a) Up to three related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) The filing must include:

(i) A listing of all base policy form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base policy.

(d) Unrelated riders or endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, rider, or an endorsement, the outline of coverage must be filed when the policy, rider or endorsement is filed.

R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.

(1) A filer submitting an individual accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Part 6, Accident and Health Insurance; and

(c) Rules R590-85, R590-126, R590-131, and R590-192.

(2) This section does not apply to filings for individual health benefit plans that are subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Rule R590-167. Individual health benefit plan filings are discussed in Section R590-220-10.

(3) Rate and rate documentation filings.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(4) Every individual accident and health policy, rider, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.

(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rules R590-85, and R590-220.

(5) A filer submitting a long term care filing, including an endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

R590-220-9. Additional Procedures for Group Market Form Filings.

(1) A filer submitting a group accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(d) Rules R590-76, R590-126, R590-131, R590-146, R590-148, R590-192, R590-233, and Section R590-220-10.

(2) Determine whether the group is an eligible group or a discretionary group.

(a) Eligible Group. A filing for an eligible group must include a completed Utah Accident and Health Insurance Group Questionnaire.

(i) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507, and Subsection 31A-22-701(2).

(ii) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(b) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(i) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(ii) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(A) the existence of a verifiable group;

(B) that granting permission is not contrary to public policy;

(C) the proposed group would be actuarially sound;

(D) the group would result in economies of acquisition and administration which justify a group rate; and

(E) the group would not present hazards of adverse selection.

(iii) A discretionary group filing that does not provide authorization documentation will be rejected.

(iv) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(v) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(vi) The commissioner may periodically re-evaluate the group's authorization.

(vii) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(3) A filer submitting a long-term care filing, including a long-term care endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(4) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.

This section contains instructions for filings subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

(1) A filer submitting health benefit plan filings that are subject to Title 31A, Chapter 30, is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organization and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30; and

(d) Rules R590-76, R590-131, R590-167, R590-175, R590-176, R590-233, and R590-247.

(2)(a) Form Filing.(i) A health benefit plan form filing must include a rate manual.

(ii) If the rate manual was previously filed, provide documentation indicating the department's receipt.

(b) Rate Manual Filing.

(i) A rate manual that does not request a change in rating methodology is a File Before Use filing.

(ii) A change in rating methodology filing is a File for Approval filing.

(iii) A new and revised rate manual must:

(A) include an actuarial certification signed by a qualified actuary;

(B) be filed 30 days prior to use;

(C) list the case characteristics and rate factors to be used;

(D) be applied in the same manner for all health benefit plans in a class;

(E) contain specific area factor and industry factors applicable in Utah;

(F) include the method of calculating the risk load, including the method used to determine any experience factors;

(G) include how the overall rate is reviewed for compliance with the rate restrictions; and

(H) include detailed description of all classes of business, as provided in Section 31A-30-105.

(iv) Any case characteristic not listed in Subsection 31A-30-106(1)(h) requires prior approval of the commissioner.

(3) Health Benefit Plan Reports.

(a) Actuarial Certification.

(i) All individual and small employer licensees must file an actuarial certification as described in Section 31A-30-106 and Subsection R590-167-11(1)(a).

(ii) The report is due April 1 each year.

(b) Small Employer Index Rates Report.

All small employer licensees must file their index rates as of January 1 of the current year and preceding year, as required by Subsection 31A-29-117(2).

(i) The report must include:

(A) the actual index rates; and

(B) calculate the percentage change in these rates between the two years.

(ii) The report is due February 1 each year.

(c) Each report must be filed separately and be properly identified.

(d)(i) All health benefit plan reports must be filed with SERFF using a type of insurance of "H16I" or "H16G," and a filing type of "Report."

(ii) A Health Maintenance Organization must use "HOrg02I" or "HOrg02G" as the type of insurance and the filing type of "Report."

R590-220-11. Additional Procedures for Medicare Supplement Filings.

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146. A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(1)(a) A licensee must file its Medicare Supplement Buyers Guide.

(b) If previously filed, indicate the filed date in the filing description.

(2) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Medicare supplement rates must comply with Section 31A-22-602, and Rules R590-146 and R590-85.

(d) A licensee 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.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Subsection R590-146-14.C.

(3) Annual Medicare Supplement Reports.

(a) Medicare supplement reports are File and Use filings.

(b) Reports are due May 31 each year.

(c) Report of Multiple Policies.

(i) As required by Section R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the licensee has issued to a single insured.

(ii) The report is required each year listing each insured with multiple policies or must state "NO MULTIPLE POLICIES WERE ISSUED."

(d) Annual Filing of Rates and Supporting Documentation.

(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with Subsection R590-146-14.C.

(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.

(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

(e) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to Subsection R590-146-14.B.

(f) Reports for Pre-Standardized Medicare supplement benefit plans and 1990 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS06," and a filing type of "Report."

(g) Reports for 2010 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS09," and a filing type of "Report."

(h) If Medicare supplement reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

R590-220-12. Additional Procedures for Combination Policies or Endorsements and Riders Providing Life and Accident and Health Benefits.

A filer submitting health and life combination policies, or health endorsements or riders, to life policies, is advised to review Rule R590-226.

(1) A combination filing is a policy, rider, or endorsement, which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are; an endorsement or rider, or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Insurance Division, and the Life Section of the Life, Property and Casualty Insurance Division.

(2) A combination filing must be submitted separately to both the Health Insurance Division and the Life Section of the Life, Property and Casualty Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement or rider, the filing must be submitted to the appropriate division based on benefits provided in the endorsement or rider.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term life policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-220-13. Additional Procedures for Long Term Care Products.

(1) A filer submitting long-term care product filings is advised to review:

(a) Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards;

(b) Rule R590-148; and

(c) Section R590-220-12.

(2) A long-term care form filing that affects rates must be filed with all required rating documentation.

(3) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) A licensee shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(4) Annual Long-term Care Reports.

(a) All four long-term care reports required by Section R590-148-25 must be submitted together as one filing.

(b) If all four reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must state "NONE."

(d) Reports are due June 30 each year.

(e) The four reports shown below are required by Section R590-148-25.

(i) Replacement and Lapse Reporting Form.

(ii) Claims Denial Reporting Form.

(iii) Rescission Reporting Form.

(iv) Suitability Report Form.

(f) All long term care reports must be filed with SERFF using a type of insurance of "LTC06," and a filing type of "Report."

R590-220-14. Criteria for Adding or Terminating Participating Providers.

(1) Criteria for adding or terminating participating providers must be submitted electronically via SERFF using a type of insurance of "H21" and a filing type of "Report."

(2) The Filing Description must state "Preferred Provider Agreement," as required by Subsection 31A-22-617.1(1)(c).

R590-220-15. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) SERFF tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-220-16. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) attach the documents in Subsections R590-220-16(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-220-17. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-220-18. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-220-19. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance filings

February 22, 2010	**31A-2-201**
Notice of Continuation March 12, 2009	**31A-2-201.1**
	31A-2-202
	31A-22-605
	31A-22-620
	31A-30-106

R590. Insurance, Administration.
R590-255. Utah NetCare Alternative Coverage Notification Rule.
R590-255-1. Authority.

This rule is promulgated pursuant to Section 31A-22-724 wherein the commissioner shall develop a model letter.

R590-255-2. Purpose and Scope.

(1) The purpose of this rule is to adopt a model letter for insurers to provide to employers as required by Section 31A-22-716 to notify an employee of the employee's options for alternative coverage.

(2) This rule applies to all accident and health insurers doing business in Utah that are required to offer alternative coverage pursuant to Section 31A-22-724.

R590-255-3. General Instructions.

(1) An insurer shall provide an employer:

(a) a letter that explains alternative coverage; or

(b) the Utah NetCare: Utah's Alternative Coverage letter.

(2) The letter required by this Subsection (1) shall be provided:

(a) to an employer at renewal;

(b) when requested by an employer; and

(c) when requested by an employee.

R590-255-4. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-255-5. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-255-6. 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 alternative coverage, NetCare
February 9, 2010 31A-22-724

R614. Labor Commission, Occupational Safety and Health.
R614-7. Construction Standards.
R614-7-1. Roofing, Tar-Asphalt Operations.

A. Hot roofing.

1. Protective clothing and equipment.

a. Roofers handling hot roofing materials shall be fully clothed including long sleeved shirts buttoned at the wrists. Other employees may wear no less than "T" shirts over their upper body.

b. Substantial shoes no less than six (6) inches in height, fully laced or secured shall be worn.

c. No gauntlet gloves shall be permitted. Wrist length gloves shall be worn.

d. Employees subjected to the possibility of splashing hot materials shall wear face shields or goggles.

2. Heating equipment.

a. All heating kettles shall be equipped with a temperature measring device in operating condition and the asphalt shall not be heated in excess of 50 degrees below the Flash Point.

b. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in safety precautions and in the proper methods of handling.

c. Attendants shall be within 100 feet of the kettle at all times while the burner flame is on.

d. Kettle heating equipment shall be installed and maintained in conformity with the American National Standards Institute Requirements for the fuel being used.

e. A fire extinguisher no smaller than 10 B-C rating shall be installed in close proximity to heating kettles.

f. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix.

3. Material handling.

a. Pump lines handling hot asphalt shall be positioned securely and equipped with a shut-off valve on each of a coupler which may be opened when lines are full.

b. Pump lines shall not be subjected to pressures in excess of the safe working pressure of the lines being used.

c. Hot asphalt shall not be carried up ladders but shall be pumped or hoisted.

d. Hoisting frames and equipment shall be installed in a safe manner, properly secured and positioned so that the operator has access to the bucket or container without subjecting himself to hazard.

e. Every tar bucket used by roofers or workers in similar trades shall be made of No. 24 gauge or heavier sheet steel and shall have a metal bail of no less than 1/4 inch diameter material. The bail shall be fastened to offset ears or the equivalent which have been riveted, welded or otherwise securely attached to the bucket. Soldered bail sockets are not permissible. Most paint buckets will not comply with these regulations.

f. Extreme caution shall be taken when working near sky lights or other roof holes.

g. Employees shall be positioned in such a manner that they cannot be struck by a bucket or other roofing material which may accidentally fall either while being hoisted, lowered or used in the roofing operation.

4. Flammable liquid with a flash point below 100 degrees F. (gasoline and similar products) shall not be used for cleaning purposes.

5. Workers shall not ride on top of loaded trucks or on running boards but shall be seated inside the cab of the vehicle.

6. Provisions of 29 CFR 1926.451 and 1926.1050 shall be complied with as applicable, covering scaffolds and ladders.

B. Asphalt mixing plants.

1. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in necessary precautions and in the proper methods of handling.

2. Suitable clothing and protective devices shall be worn by employees handling or applying asphalt and tar materials.

3. Positive care shall be taken to prevent heating materials above the flashpoint. Mixing operations shall be performed at the lowest practicable temperature.

4. Drums or other containers in which liquid bituminous materials are stored shall be kept tightly closed when not in use and shall be protected from sources of excess heat, sparks, and open flames.

5. A 10 B.C. fire extinguisher shall be provided at locations where heating devices or melting kettles are in use.

6. Asphalt or tar heating kettles when in use shall not be left unattended and shall be securely fastened to prevent accidental tipping. They shall be provided with a lid and thermometer.

7. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix. The use of gasoline or similar volatile materials as thinners is prohibited.

8. Where natural ventilation is insufficient at enclosed areas in which hot tar, asphalt, etc., are being heated or applied, an approved method of mechanical ventilation shall be provided. In addition, respirators shall be furnished to workers where required.

9. Heating, pumping, and application operations shall not be left unattended and an operator shall be stationed near the equipment to cut off flow or care for other emergencies.

10. Spraymen handling hot asphalt or tar shall not be allowed to work under hoses supplying hot materials to the sprays. Only flexible metallic hoses fitted with insulated handles shall be used in hand-spraying operations.

11. Form pins having mushroomed or split heads shall be discarded or effectively repaired.

12. Pipe lines which contain hot oil or asphalt shall be equipped with a shut-off valve on each side of a coupler which may be opened when lines are full.

R614-7-2. Grizzlies Over Chutes, Bins, and Tank Openings.

A. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute, or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

B. Employees shall not work on top of material stored or piled above chutes, draw holes or conveyor systems while material is being withdrawn unless protected.

C. Chutes, bins, drawholes, and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

D. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-7-3. Cranes and Derricks.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-7-4. Residential-Type Construction, Raising Framed Walls.

A. Scope and Application

This section applies to work directly associated with the

raising of framed walls in new buildings or structures in residential-type construction.

B. Definitions

1. "Residential-type Construction" means construction using the operations, methods, and procedures associated with residential and light commercial construction characterized by joists or trusses resting on stud walls and using wood and/or light gage steel frame construction.

2. "Bottom Plate" means the bottom horizontal member of a frame wall.

C. Standards For Raising Walls.

1. At no time during the raising of the framed wall shall an employee who is not performing the actual lift be allowed under the wall system unless a mechanical bracing system is in place to arrest the fall of a wall.

2. Before manually raising framed walls that are 10 feet or more in height, temporary restraints such as cleats on the foundation/floor system or straps on the wall bottom plate shall be installed to prevent inadvertent horizontal sliding or uplift of the framed wall bottom plate. Anchor bolts and/or toe nails, are not sufficient for use in blocking or bracing the framed wall.

3. Framed walls 18 feet or more in height shall be raised using mechanical lifting devices.

D. Standards For Training.

1. The employer shall provide a training program to employees engaged in raising framed walls. The program shall enable employees to recognize the hazards associated with raising framed walls and shall include procedures to minimize those hazards, including:

a. Where required by the standard, the use of and limitations to temporary restraints used to prevent inadvertent sliding and uplift on the bottom plate;

b. the use of mechanical lifting devises;

c. the use of mechanical bracing systems; and

d. the role of each employee involved in the raising of a framed wall.

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R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-105. Blaster Training, Examination and Certification.
R645-105-100. Introduction.

The rules in R645-105-100 present the requirements for blaster training, examination and certification at coal mining and reclamation operations. The Division is empowered to delegate, through contract or other means, the blaster training, examination, and certification program or any part thereof. The object of such delegation will be to minimize duplication of efforts of Utah agencies in certifying, licensing, or training mining personnel.

R645-105-200. Training.

210. To receive certification, a blaster will receive training from a program approved by the Division. Training may be provided by a permittee, industry, and/or the Division.

220. Training includes, but is not limited to, the technical aspects of blasting operations, and Utah and federal laws governing the storage, transportation, and use of explosives. Blasting courses will provide training and discuss practical applications of explosives.

230. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives will receive direction and on-the-job training from a blaster.

240. Training will include course work in, and discuss the practical application of:

241. Explosives, including:

241.100. Selection of the type of explosive to be used;

241.200. Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

241.300. Handling, transportation, and storage;

242. Blast designs, including:

242.100. Geologic and topographic considerations;

242.200. Design of a blast hole, with critical dimensions;

242.300. Pattern design, field layout, and timing of blast holes; and

242.400. Field applications;

243. Loading blast holes, including priming and boostering;

244. Initiation systems and blasting machines;

245. Blasting vibrations, airblasts and flyrock, including:

245.100. Monitoring techniques; and

245.200. Methods to control adverse effects;

246. Secondary blasting applications;

247. Current federal and Utah rules applicable to the use of explosives;

248. Blast records; and

249. Schedules.

250. Training will also include course work in, and discuss the practical application of:

251. Preblasting surveys, including:

251.100. Availability;

251.200 Coverage; and

251.300. Use of in-blast design;

252. Blast-plan requirements;

253. Certification and training;

254. Signs, warning signals, and site control; and

255. Unpredictable hazards, including:

255.100. Lightning;

255.200. Stray currents;

255.300. Radio waves; and

255.400. Misfires.

R645-105-300. Examination.

310. Candidates for blaster certification will meet the following qualifications:

311. Have one year practical field experience involving blasting prior to taking the examination;

312. Take an approved blaster training course as required by R645-105-210;

313. Pass the written examination; and

314. Be twenty-one years of age or older.

320. Examination will be administered by the Division or its designee and will include, at a minimum, the topics set forth in R645-105-240 and R645-105-250.

R645-105-400. Certification.

410. Upon successful completion of the training and examination process identified in R645-105-200 and R645-105-300, the candidate for blasting certification will be awarded a certificate for three years from the date of issuance.

420. Blasting certificates may be renewed by attending a refresher course approved by the Division.

430. Refresher courses will review the topics identified in initial training in R645-105-200.

440. Suspension and revocation of certification.

441. The Division, when practicable, following written notice and opportunity for hearing and upon a Board finding of willful misconduct, will suspend or revoke the blaster's certification during the term of the certification or take other necessary action for any of the following reasons:

441.100. Noncompliance with any blasting-related order issued by the Board;

441.200. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

441.300. Violation of any provision of Utah or federal explosives laws or regulations; or

441.400. Providing false information or a misrepresentation to obtain certification.

442. If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing will be provided as soon as practical following the suspension, revocation, or other adverse action.

443. Upon notice of suspension or revocation of a blaster certificate, the blaster shall immediately surrender the revoked or suspended certificate to the Division.

450. Protection and Conditions of Certification.

451. Protection of Certification. Certified blasters will take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence will be reported immediately to the Division.

452. Conditions of Certification. In addition to the recertification described in R645-105-420, the following conditions for maintaining certification apply to all blasters:

452.100. A blaster will immediately exhibit, upon request, his or her certificate to any authorized representative of the Division and the Office;

452.200. Blasters' certificates will not be assigned or transferred; and

452.300. Blasters will not delegate their responsibility to any individual who is not a certified blaster.

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R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-400. Inspection and Enforcement: Division Authority and Procedures.
R645-400-100. General Information on Authority and Procedures.

110. Right of Entry.

111. Within the State of Utah, Division representatives may enter upon and through any coal exploration or coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

112. Division representatives may inspect any monitoring equipment or method of exploration or operation and have access to and may copy any records required under the approved State Program. Division representatives may exercise these rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

120. Enforcement Authority. Nothing in the Federal Act or the State Program will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-10-20 and 40-10-22 of the Act.

130. Inspection Program.

131. The Division will conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under its jurisdiction, and will conduct a partial inspection of each inactive coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State Program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State Program.

132. The Division will conduct an average of at least one complete inspection per calendar quarter of each active or inactive coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State Program, within the entire area disturbed or affected by the coal mining and reclamation operation. Abandoned sites may be inspected on a frequency as determined by the procedures set out in the definition of "abandoned sites" which is found in R645-100-200.

133. The Division will conduct inspections of coal explorations as are necessary to ensure compliance with the State Program.

134. Aerial Inspection.

134.100. Aerial inspections will be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation operation inspected.

134.200. Any potential violation observed during an aerial inspection will be investigated on-site within three (3) days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 40-10-22(1)(b) of the Act will be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection will not be considered to be an additional partial or complete inspection for the purposes of R645-400-131 and R645-400-132.

135. The inspections required under R645-400-131 through R645-400-134 will:

135.100. Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

135.200. Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

135.300. Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State Program.

136. For the purposes of R645-400 an inactive coal mining and reclamation operation is one for which:

136.100. The Division has secured from the permittee the written notice provided for under R645-301-515.320; or

136.200. Reclamation Phase II as defined at R645-301-880.320 has been completed and the liability of the permittee has been reduced by the Division in accordance with the State Program.

140. Availability of Records.

141. The Division will make available to the Director of the Office, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

142. Copies of all records, reports, inspection materials, or information obtained by the Division will be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except:

142.100. As otherwise provided by federal law; and

142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.

143. The Division will ensure compliance with R645-400-142 by either:

143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or

143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

150. Public Participation. The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.

160. Compliance Conference.

161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.

162. A permittee may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 and R645-400-130, or any applicable permit or exploration approval.

163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.

164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may

become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.

165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:

165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R645-400-200. Information Related to Inspections.

210. Requests for Inspections.

211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.

212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.

213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.

214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

214.200. If no Division inspection was conducted, an explanation of the reason why; and

214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.

215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.

220. Right of Entry.

221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401:

221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

221.200. May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and

221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.

230. Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

240. Review of Decision Not to Inspect or Enforce.

241. Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.

243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed

a timely and complete application for a permit to conduct such operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing any person who has been identified under R645-300-148 and R645-301-112.300 and 112.400 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

320. Notices of Violation.

321. The Division will issue a notice of violation if, on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310.

322. When on the basis of any Division inspection other than one described in R645-400-321, the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

323. A notice of violation issued under R645-400-320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity:

323.100. The nature of the violation;

323.200. The remedial action required, which may include interim steps;

323.300. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

323.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

324. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R645-400-327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

325. If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R645-400-314.

326. The Division will terminate a notice of violation by written notice to the permittee, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R645-401.

327. Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

327.200. Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

327.300. Where the permittee cannot abate within 90 days due to a labor strike;

327.400. Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

327.500. Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

328. Other information on abatement times extended beyond 90 days.

328.100. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200. If any of the conditions in R645-400-327 exists, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted will not exceed the

shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions of R645-400-324 and R645-400-327.

328.300. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative will promptly and fully document in the file his or her reasons for granting or denying the request. The Director or designee of the Director specified in R645-400-328.200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328.400. Any determination made under R645-400-328.200 or R645-400-328.300 will contain a right of appeal to the Board under R645-400-360.

328.500. No extension granted under R645-400-328.200 or R645-400-328.300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

341.100. By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal

exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341.200. As an alternative to R645-400-341.100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342. A show cause order may be served on the permittee in either manner provided in R645-400-341.

343. Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350. Informal Public Hearing.

351. Except as provided in R645-400-352 and R645-400-353 a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R645-401.

352. A notice of violation or cessation order will not expire as provided in R645-400-351, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived, or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R645-400-352:

352.100. The informal public hearing will be deemed waived if the permittee:

352.110. Is informed, by written notice served in the manner provided in R645-400-352.200, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

352.120. Fails to request an informal public hearing within that time;

352.200. The written notice referred to in R645-400-352.110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee; and

352.300. The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

353.100. The permittee; and

353.200. Any person who filed a report which led to that notice or order.

354. The Division will also post notice of the hearing at the office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

355. An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356. Within five days after the close of the informal public hearing, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to:

356.100. The permittee; and

356.200. Any person who filed a report which led to the notice or order.

357. The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40-10-22-(3). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360. Board Review of Citations.

361. Petition Process.

361.100. A permittee issued a notice of violation or cessation order under R645-400-320 or R645-400-310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40-10-22(3) and the Board's Rules within 30 days after receiving notice of the action.

361.200. Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board, pursuant to UCA 40-6-10(6), may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361.300. The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing of receipt of the petition for review of the Division's cessation order.

362. The filing of a petition for review and request for a hearing under R645-400-360 will not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

370. Inability to Comply.

371. No cessation order or notice of violation issued under R645-400-300 may be vacated because of inability to comply.

372. Inability to comply may not be considered in determining whether a pattern of violations exists.

373. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R645-401 and of the duration of the suspension of a permit under R645-400-330.

380. Compliance Conference.

381. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 or R645-400-100.

382. The Division may accept or refuse any request to conduct a compliance conference under R645-400-381. Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383. The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384. Neither the holding of any compliance conference under R645-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation

or cessation order, whether prior or subsequent to such conference; or

384.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390. Injunctive Relief.

391. The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391.100. Violates or fails or refuses to comply with any order or decision of the Division under the State Program;

391.200. Interferes with, hinders or delays the Division in carrying out the provisions of the State Program;

391.300. Refuses to admit the Division to a mine;

391.400. Refuses to permit inspection of a mine by the Division;

391.500. Refuses to furnish any required information or report;

391.600. Refuses to permit access to or copying of any required records; or

391.700. Refuses to permit inspection of monitoring equipment.

392. No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R645-400-391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure.

KEY: reclamation, coal mines
November 17, 2000 40-10-1 et seq.
Notice of Continuation Februar 17, 2010

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) From October 1 through April 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Motor vehicles will not be allowed on lands administered by the Division of Parks and Recreation.

(b) The established speed limit is 20 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the water's edge. Travel parallel to the water's edge is allowed, outside of the 100 foot zone.

(d) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 6 a.m.

(e) No campfires or fireworks are allowed.

(6) From May 1 through September 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Areas posted by the division are off limits to motorized vehicles.

(b) The established speed limit is 15 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the waters edge.

(d) Unless posted otherwise, or to access a camping or picnicking spot, no motor vehicles may travel parallel to the waters edge.

(e) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(f) No campfires or fireworks are allowed.

(7) Persons found in violation of 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

KEY: sovereign lands, permits, administrative procedures
February 25, 2010 65A-10-1
Notice of Continuation April 2, 2007

R652. Natural Resources; Forestry, Fire and State Lands.
R652-90. Sovereign Land Management Planning.
R652-90-100. Authority.

This rule implements Sections 65A-2-2 and 65A-2-4 which requires that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.

R652-90-200. Scope.

This rule sets forth the planning procedures for natural and cultural resources on sovereign land as required by law. These procedures establish comprehensive land-management policies using multiple-use, sustained-yield principles in order to make the interest of the beneficiary paramount. Management plans shall guide the implementation of stated management objectives, and provide direction for land-use decisions and activities on sovereign lands. One or more of the following plans, as defined in R652-1-200, shall be implemented pursuant to 65A-2-2:

(1) Comprehensive management plans;
(2) Resource plans;
(3) Site-specific plans.

R652-90-300. Initiation of Planning Process.

1. A comprehensive planning process is initiated by the designation of a planning unit as planning priorities are established by the division.

2. Resource Management planning is initiated by the division's identification and determination that there is a need for such a plan.

3. In the absence of a comprehensive management plan or a resource management plan exists for sovereign land, site-specific planning shall be initiated either by:

(a) an application for a sovereign land use, or

(b) the identification by the division of an opportunity for commercial gain in a specific area.

R652-90-400. Site-Specific Planning.

1. When the division conducts site-specific planning it shall consider:

(a) a comparative evaluation of the commercial gain potential of the proposed use with competing or existing uses;

(b) the effect of the proposed use on adjoining sovereign lands;

(c) an evaluation of the proposed use or action with regard to natural and cultural resources, if appropriate;

(d) the notification of, and environmental analysis of, the proposed use provided by the public, federal, state, and municipal agencies through the Resource Development Coordinating Committee (RDCC) process; and

(e) any further notification and evaluations as required by applicable rules.

2. During the site-specific planning process, the director may determine that a comprehensive management plan be prepared. In making such a determination, the director may consider:

(a) the amount of public interest in the natural and cultural resources of the area;

(b) any unique attributes of the land;

(c) the potential for conflicts with other land uses; and

(d) the opportunities for commercial gain of the sovereign land resources by development of a comprehensive or resource management plan, exchange of the land or other options in lieu of those set forth in the application.

R652-90-500. Notification and Public Comment.

1. Once a planning unit is designated for a comprehensive management plan, notice shall be sent to the Governor's Office of Planning and Budget for inclusion in the RDCC agenda packet and, if appropriate, the weekly status report.

2. The division shall conduct at least one public meeting in the vicinity of a planning unit that has been designated for a comprehensive management plan.

(a) The meeting shall provide an opportunity for public comment regarding the issues to be addressed in the plan.

(b) The public meeting(s) shall be held at least two weeks after notice in a local newspaper.

(c) Notice of public meeting(s) shall be sent directly to lessees of record, local government officials and the Office of Planning and Budget for inclusion in the RDCC agenda packet and weekly status report. A mailing list shall be maintained by the division.

(d) Additional public meetings may be held.

3. Notice that a site-specific or resource planning effort is under way shall be given to:

(a) affected parties as required by rule for exchange, or lease;

(b) the Governor's Office of Planning and Budget for inclusion in the RDCC Project Management System for public and agency notification and comment.

R652-90-600. Public Review.

1. Comprehensive management plans shall be published in draft form and sent to persons on the mailing list established under R652-90-400, the Governor's Office of Planning and Budget, and other persons upon request.

(a) A public comment period of at least 45 days shall commence upon receipt of the draft in the Governor's Office of Planning and Budget.

(b) All public comment shall be acknowledged pursuant to 65A-2-4(2).

(c) The division's response to the public comment shall be summarized in the final comprehensive management plan.

(d) Comments received after the public comment period shall be acknowledged but need not be summarized in the final plan.

2. Resource plans shall be published and made available upon request.

(a) Persons wishing to comment on these plans may do so at any time.

(b) The division shall acknowledge all written comments.

3. Upon completion of any planning process, the Record of Decision or other document summarizing final division action and relevant facts shall be provided to any persons requesting notice from the division.

R652-90-700. Interim Management.

1. Once the planning process is initiated, and for the purpose of effective interim management, the division may designate a primary intended land use or withdraw land in the planning unit from any or all surface or subsurface land use for the duration of the planning process or 18 months, whichever is less.

2. At the onset of a management planning process, a primary intended land use may be designated for land that is reasonably expected to be used for a combination of mineral, industrial, recreational, residential and other uses.

(a) During the planning process, surface actions which will adversely affect the primary intended land use shall be subject to a maximum term of five years and the prohibition of surface disturbance which will foreclose future use options.

(b) The primary intended land use may be changed during the planning process in response to new management opportunities.

3. Any application for activities covered by a current withdrawal shall be held in abeyance. At the conclusion of the planning process, the director may deny an application or any part thereof which is inconsistent with the completed plan, or

continue to process all other applications which have been held in abeyance.

4. A lease which expires during the planning processes may be extended only for the duration of the withdrawal. Extensions granted under this provision are exempt from the requirement of R652-30-1000.

R652-90-800. Multiple-Use Framework.

Comprehensive management plans shall consider the following multiple-use factors to achieve sovereign land-management objectives:

1. The highest and best use(s) for the sovereign land resources in the planning unit.

2. Present and future use(s) for the sovereign land resources in the planning unit;

3. Suitability of the sovereign lands in the planning unit for the proposed uses;

4. The impact of proposed use(s) on other sovereign land resources in the planning unit;

5. The compatibility of possible use(s) as proposed by general public comments, application from prospective users or division analysis; and

6. The uniqueness, special attributes and availability of resources in the planning unit.

R652-90-900. Joint Planning.

The division may participate in joint planning with other land management agencies.

R652-90-1000. Amendments to Management Plans.

1. The division shall follow the management direction, policies and land use proposals presented in comprehensive management plans. When unforeseen circumstances arise which may require a change in plans, the division shall adhere to the following procedure for amendments to comprehensive management plans:

(a) notify affected lessees, beneficiaries, local and other affected government entities;

(b) submit the proposed amendment to the RDCC for review and comment; and

(c) conduct a public meeting in the affected area to provide an opportunity for comment, after giving two weeks' notice in a local newspaper. The division shall acknowledge all written comments.

2. Resource plans may be amended by the division without public notice.

3. Site-specific plans may be amended by the director at any time following issuance provided that the amendment:

(a) does not materially affect any person's rights or obligations, and

(b) is consistent with existing policy or rule.

R652-90-1100. Termination of Planning.

Prior to issuance of a final planning document, a planning process may be suspended or terminated by the division.

R652-90-1200. Environmental Assessments.

1. The RDCC process provides an environmental assessment for purposes of sovereign land management. The public may comment on proposed sovereign land uses through the RDCC and other public notification processes.

2. Any additional environmental impact analysis shall be at the director's discretion based on a written determination that additional evaluation is consistent with division duties.

KEY: management, public meetings, environmental assessment, land use
February 24, 2010 65A-2-4
Notice of Continuation April 2, 2007

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit

is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) 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 protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. 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 headlights 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.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-21; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime 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 Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(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 poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(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 or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game

permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt by region the general archery, the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-24(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-25. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) (a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-24(3).

R657-5-26. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-24(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-27. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck

hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management buck deer, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-28. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-29. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units;

(iii) one elk, any bull or antlerless on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-34(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-34(3).

R657-5-31. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-34(3).

R657-5-32. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-34(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-33. Premium Limited Entry and Limited Entry Bull Elk Hunts.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-34(3).

R657-5-34. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-35. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-36. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the

Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-37. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-38. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-39. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-40. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-41. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

R657-5-42. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-43. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-44. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-45. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-62-17 are incurred as a result of obtaining management bull elk permits.

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing.

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk

permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-34(3).

R657-5-46. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-28, and

(b) antlerless elk, as provided in Subsection R657-5-34.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-47. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management buck deer archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management buck deer permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management buck deer permits.

(3) Waiting periods as provided in R657-62-17 are incurred as a result of obtaining management buck deer permits.

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management buck deer permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management buck deer permit in the big game drawing.

(5) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(8) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-28(4).

KEY: wildlife, game laws, big game seasons
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23-16-5
23-16-6

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22, which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Falconiformes (i.e., vultures, kites, eagles, hawks, caracaras, and falcons) and all avian species in the Order Strigiformes such as owls and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "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, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor.

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to indoor facilities where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of

sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Falconiformes or the Order Strigiformes and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), Rock Dove/feral pigeon (Columba livia). pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least 14 years of age.

R657-20-4. Falconry COR, Permits, and Licenses.

(1) The division may deny issuing a COR or permit to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

(a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah. A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

R657-20-5. Application for a Resident or Nonresident Falconry COR.

(1) Resident Applications

(a) A resident applying for or renewing a falconry COR shall:

(i) Submit a completed falconry application to the Division; and

(ii) Include the appropriate COR fee.

(b) At the time of renewal, the current falconry COR number must be included on the falconry COR renewal application.

(c) A falconer claiming residency in Utah may not claim residency in, or possess a resident falconry license or falconry permit from, another state.

(2) Nonresident Applications

(a) A six-month domicile period is required for a nonresident falconer entering Utah to establish residency.

(b) A nonresident falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah during the six-month domicile period while establishing residency.

(i) If the raptors are to be flown or exercised during the six-month domicile period, the following permits must be in possession:

(A) a valid falconry license from the previous state; and

(B) a valid federal falconry permit when required under federal law.

(ii) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(c) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of each raptor held in possession, and an import authorization number

obtained from the Utah Department of Agriculture must be presented to the Division within 5 business days after entering Utah.

(d) A non-resident falconer establishing residency must maintain proper facilities and equipment.

(i) A facilities inspection is required and must be requested from the Division by the non-resident falconer no later than 120 days of establishing domicile in the state.

(A) Requests may be made in writing or via email at falconry@utah.gov.

(ii) A facilities inspection will be completed by the Division within 30 business days of the date the request for an inspection is received.

(iii) A non-resident falconer establishing residency may temporarily house raptors prior to their initial facilities inspection (see Section R657-20-20).

(e) At the conclusion of the six-month domicile period, a new resident applying for a falconry COR must submit the following to the Division:

(i) A completed falconry application indicating class designation;

(ii) A copy of a valid falconry license from the former state of residency indicating class designation;

(iii) A valid federal falconry permit number, if applicable;

(iv) Proof that the applicant has passed the falconry test administered by the state, tribe, or territory where legal residence was maintained, or proof that the applicant previously held a falconry permit at the class level being requested; or:

(A) Correctly answer at least 80 percent of the questions on an examination administered by the Division.

(B) If the applicant passes the examination, the Division will decide which level of falconry permit to be issued, consistent with the class requirements outlined in Sections R657-20-16, R657-20-17, and R657-20-18 of this rule; and

(v) Submit the appropriate COR fee.

(f) A non-resident falconer entering Utah to establish residency that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

(g) At the conclusion of the six-month domicile period outlined in Section R657-20-5, a falconer may apply for a resident Utah falconry COR.

R657-20-6. COR Renewal and Annual Report Forms.

(1) Resident falconers wishing to renew a valid falconry COR must submit a completed falconry COR renewal form to the Division upon or before the expiration date specified on the current falconry COR.

(a) falconry COR Renewals require up to a 30-day processing time for completion.

(2) All Resident falconers holding a valid falconry COR must submit a completed falconry Annual Report to the Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual summary report of their falconry activities that are on file.

(b) Each resident falconer must verify the annual summary report for accuracy and return the report to the Division by the following January 31.

(3) Residents who do not hold a valid falconry COR or do not submit a COR renewal form by the date their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3.

(4) Failure to submit required records and timely, accurate, or valid reports may result in administrative action by the Division.

(a) Administrative action that may be taken by the Division include:

(i) Issuance of a probationary COR with restrictions on activities allowed; or

(ii) Non-renewal of a COR until the required records and reports are completed.

(5) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(a) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(b) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(6) A falconer who has allowed their COR to lapse may apply for a new COR.

(a) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4(1).

(b) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-16(1)(b)(ii).

(i) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(ii) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-8, R657-20-9, and R657-20-10.

R657-20-7. Nonresident Participation in Meets or Trials.

(1) A nonresident entering Utah to participate in the sport of falconry at an organized meet must be 14 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(2) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the Division.

(3) A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(4) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(5) A nonresident participating in an organized meet for more than five consecutive calendar days must obtain appropriate nonresident licenses, permits, tags, and stamps as provided in the proclamations of the Wildlife Board if protected wildlife is pursued.

(6) A nonresident participating in an organized meet for more than five consecutive calendar days must provide a health certificate and an import authorization number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

(7) A falconry meet license is not required for participation in a falconry trial.

(8) An organizer of a falconry meet must obtain prior approval from the Wildlife Board for non-residents to purchase a 5-day non-resident meet license.

(a) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the Division.

R657-20-8. Care and Facilities Requirements.

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house

and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(4) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(5) The Division should complete an inspection of falconry facilities within 30 business days of receiving a request for inspection.

(a) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(b) Requests for inspections may be made verbally or in writing or via email.

(6) Facilities Requirements.

(a) Facilities must be adequate to house the number of raptors in possession.

(b) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(i) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-8(6)(d)(viii).

(ii) A new facilities inspection may be required when a permittee increases the number of raptors in their possession.

(c) The Utah falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(d) The Mews.

(i) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(ii) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(iii) Untethered raptors may be housed together in the mews if they are compatible with each other.

(iv) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(v) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(vi) If raptors housed in an indoor mews that is not a place of residence are untethered, the mews must be fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the mews.

(vii) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(viii) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(A) A raptor may be untethered inside a place of residence when being handled.

(B) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(C) A raptor may be housed untethered inside a flight chamber constructed within a place of residence, provided the chamber has a source of light and is fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the chamber.

(e) Weathering Area

(i) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(ii) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(iii) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(iv) Raptors must be tethered while inside the weathering area.

(v) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(vi) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall to the perch will not cause injury to the raptor or feather damage.

(vii) Each raptor should have a pan of clean water available.

(A) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(viii) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(ix) falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(f) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(g) Any falconer who possesses a raptor and moves or changes the address of where the raptor is held must notify the Division in writing of the change of address within 5 business days.

(i) An inspection of facilities may be required at the new location.

(h) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

(i) A raptor may be housed in temporary facilities for no more than 120 consecutive calendar days, provided the temporary facilities has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

R657-20-9. Equipment.

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material, or the materials and equipment to make them, or the material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(b) At least one flexible, weather-resistant leash.

(c) At least one swivel of acceptable falconry design.

(d) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(e) At least one perch of an acceptable design will be provided for use for each raptor.

(f) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(g) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

R657-20-10. Inspection of Raptors, Facilities, CORs, and Documents.

(1) A facilities inspection is required prior to initial issuance of a falconry COR and may be requested by the falconer in writing or by email at falconry@utah.gov. Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(2) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(3) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

R657-20-11. Take of Wild Raptors.

(1) A licensed falconer may take from the wild any raptor species of the Order Falconiformes or Strigiformes only as provided in this rule

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptors taken from the wild for falconry is a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A raptor taken from the wild for falconry must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the date of capture.

(2) Resident Take of Wild Raptors

(a) A Utah Resident may not take any raptor from the wild without first obtaining a COR and a Raptor Capture Permit from the Division.

(b) A Raptor Capture Permit is valid for one raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(c) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-21(2) and (3) as long as the permit holder is present.

(d) Raptor Capture Permits are valid only for the season specified on the permit.

(e) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a raptor.

(f) Raptors may not be taken at any time or in any manner that violates any State, federal, tribal, or local law.

(g) While trapping, falconers shall not retain and transport more than one captured raptor per capture permit.

(3) Taking of wild raptors is prohibited within the boundaries of all National Parks in Utah and on all Utah State Parks.

(4) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(5) No more than two 2 raptors may be taken from the wild each calendar year to use in falconry.

(6) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred raptor will not count as a capture by the recipient.

(c) The transferred raptor will always be considered a wild bird.

(7) A permittee may not intentionally capture raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a raptor he or she is not allowed to possess, it must be released immediately.

(8) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17 subpart C, and if a federal endangered species permit is obtained before taking the bird.

(9) A General or Master Class falconers may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(10) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(11) Periods for Allowable Take Of Raptors From the Wild

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1

through December 31.

(i) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) A peregrine falcon banded with a Federal Bird Banding Laboratory aluminum band may not be taken from the wild and retained.

(iv) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(v) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(d) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(i) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(e) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(i) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(ii) Recapture of falconry raptors must be reported to the Division no more than 5 business days from the date of recapture.

(iii) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(A) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(B) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

(12) Special provisions for take of peregrine falcons.

(a) Only General and Master Class falconers only may take eyas or passage age peregrine falcons in accordance with Sections R657-20-11 and R657-20-12 and as provided in this rule.

(i) Application procedures for taking eyas or passage Peregrine Falcons are provided in Section R657-20-12 and R657-20-13.

(ii) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(iii) The number of permits issued to take peregrine falcons will be set by the Division annually.

(A) One non-resident take permit will be issued annually. If that permit is not applied for, it will be made available to resident falconers.

(B) Any remaining permits that are not applied for will be made available to resident and nonresident falconers on a first-come first-served basis.

(iv) Issued permits will allow take of one eyas or passage age Peregrine Falcon.

(b) An eyas peregrine falcon may not be removed from its aerie prior to 10 days of age.

(c) Aeries of peregrine falcon may not be entered when young are 28 days or more of age.

(d) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(e) A peregrine falcon that is marked with a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(13) Special provisions for take of golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-18(2)(c)(i).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands;

(14) Acquiring a bird for falconry from a permitted rehabilitator.

(a) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A raptor acquired for falconry from a rehabilitator must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the transaction.

(ii) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-12. Nonresident Take of Wild Raptors.

(1) A Nonresident may not take any raptor from the wild without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(c) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(d) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

R657-20-13. Application Procedures and Drawings for Capture of Peregrine Falcons, Sensitive Raptors, and Raptors Available to Nonresident Falconers.

(1) Applications for Raptor Capture Permits must be made for:

(a) Peregrine falcons;

(b) Sensitive raptor species for which take is limited by the falconry Program Coordinator pursuant to Section R657-20-11, and

(c) Raptors designated for non-resident take.

(2) If necessary, a drawing will be held for those species that have more applicants than available permits.

(3) An individual may only draw once every 2 years for a Raptor Capture Permit to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(a) In the event that unclaimed permits remain after a drawing, then the 2 year restriction is waived.

(4) If the number of applications received exceeds the number of available permits, then the Division will conduct a drawing to determine which applicants receive a permit.

(a) Any remaining permits that are not applied for will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis.

(5) Application forms for Raptor Capture Permits are provided by the Division.

(6) An applicant for a Raptor Capture Permit must submit a complete and accurate application to include the following:

(a) A copy of the applicant's valid Utah falconry COR, or valid license from their state of residency indicating the falconry class designation;

(b) A copy of the applicant's valid federal permit, when required by federal law; and

(c) A non-refundable application fee.

(7) Applications for taking raptors must be received by the Division through the mail, or by email, no later than close of business on the last business day of March each year.

R657-20-14. Importation Requirements for Residents and Nonresidents.

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) a certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) an import authorization number issued through the Utah Department of Agriculture, Animal Health Office.

(2) Any raptor brought into the state on a permanent basis must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of importation.

(3) A raptor imported into the state for falconry or any other purpose have an import permit and certificate of veterinary inspection issued by the Utah Department of Agriculture and Food pursuant to R58-1-4.

R657-20-15. Flying a Hybrid Raptor in Falconry.

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

R657-20-16. Apprentice Class Falconer and Sponsors.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 14 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 14th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-8, R657-20-9, and R657-20-10 before a falconry COR can be issued.

(2)(a) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(i) Husbandry and training of raptors held for falconry;

(ii) Relevant wildlife laws and regulations, and

(iii) Determining what species of raptor is appropriate for the Apprentice to possess.

(b) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(c) A sponsor must be:

(i). a Master Class Falconer who holds a valid Utah falconry COR or tribal falconry permit;

(ii) a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR or tribal falconry permit

(d) Unless approved by the Division in writing, the sponsor cannot reside

(i) greater than a 100 mile distance from the Apprentice; or

(ii) outside of Utah.

(e) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

(i) Apprentice Class falconers that change sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements in R657-20-16(2)(a) through (d).

(3) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess any wild-caught passage age raptor or captive-bred raptor species of the Order Falconiformes or Strigiformes for falconry, with the following exceptions:

(i) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles, or federally listed threatened or endangered species, or Utah state Sensitive Species, or any species listed as a national Species of Conservation Concern in the most recent list of "Birds of Conservation Concern" from the federal Division of Migratory Bird Management to include wild, captive-bred, or hybrid individuals of any restricted species, with the following exceptions:

(1) Notwithstanding Subsection (3)(a)(i), an Apprentice Class falconer may take or possess raptors specified in the falconry guide book

(2) An Apprentice Class falconer may possess a hybrid raptor provided that the hybrid raptor is not the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act).

(b) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(c) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(d) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-11(6) and R657-20-21.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-17. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor, captive-bred, or hybrid raptor species of the Order Falconiformes or Strigiformes except eagles.

(b) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-18. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Falconiformes or Strigiformes except a bald eagle (Haliaeetus leucocephalus).

(i) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(c) below are met.

(b) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, but they must be trained in the pursuit of wild game and used for hunting.

(c) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

(ii) A Master Class falconer that satisfies the requirements of this rule may be authorized to take or possess no more than 3 eagles as part of the 5-wild bird maximum limitation for the Master Class level.

R657-20-19. Unintentional Kill of a Prey Item by a Falconry Raptor.

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 5 business days of the take event.

(3) Unintentional take of any state Sensitive Species must

be reported to the Division within 5 business days of the take event.

R657-20-20. Temporary Care of Falconry Raptors.

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division indefinitely in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division indefinitely in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconers caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 90 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

R657-20-21. Reporting Requirements for Acquisition of Raptors.

(1) Take of any raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email to falconry@utah.gov, no later than 10 business days after capture of the raptor.

(2) A permittee may receive assistance from another individual in capturing a raptor, but the permittee must be present at the capture site

(a) Regardless of the assistance of another person in capturing a raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(3) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(a) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(b) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(c) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(d) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(4) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(a) Any transfer or exchange for a raptor must be reported to the Division within 10 business days either by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email to falconry@utah.gov.

(b) A permittee may not purchase, sell, trade, or barter a wild raptor.

(i) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(c) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(5) Anytime a permittee acquires, transfers, rebands, or microchips a raptor; or a raptor in their possession is stolen; or is lost to the wild and is not recovered within 30 days; or dies; the occurrence must be reported to the Division within 10 days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A to the Division or FWS pdf i-381A via email to falconry@utah.gov.

(6) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(7) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(8) On an annual basis, the falconry Program Coordinator shall determine the number of capture permits issued for the taking of eyas raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the number of eyas capture permits available for sensitive raptors shall be available by February 1 of each year.

(b) Application procedures for taking sensitive raptor species are provided in Section R657-20-11.

R657-20-22. Banding or Tagging Raptors Used in Falconry.

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (Parabuteo unicinctus), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, numbered U. S. Fish and Wildlife Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Take or acquisition of any wild raptor must be reported to the Division by either entering the required information including, when required, the band number or microchip information in the electronic database at http://permits.fws.gov/186A, or by submitting a paper form 3-186A or FWS pdf i-381A via email no later than 10 business days after capture or acquisition of the raptor.

(3) Raptors bred in captivity must be banded with a U. S. Fish and Wildlife Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered U. S. Fish and Wildlife Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division by either entering the required information including the band number and microchip information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after banding the raptor.

(4) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division within 5 business days and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division.

(5) A band may not be altered, defaced, or counterfeited.

(6) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i). Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

(7) A raptor removed from the wild may not be banded with a with a U. S. Fish and Wildlife Service seamless metal band or plastic, numbered U. S. Fish and Wildlife Service yellow band.

R657-20-23. Raptors Injured Due to Falconer Trapping Efforts.

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) Take of the injured raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after capture of the raptor.

(i). The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(ii) The injured raptor will count against the permittee's possession limit.

(b) An injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(i) the injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

R657-20-24. Releasing a Falconry Raptor to the Wild.

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

R657-20-25. Hacking of Falconry Raptors and other Training Techniques.

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the U. S. Fish and Wildlife Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training

or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

R657-20-26. Use of Pen-Reared Game Birds for Meets, Trials and Training.

(1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.

(3) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (c).

(a) Aluminum leg bands may be purchased at any Division office.

(b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and

(b) Only during the approved dates of the meet.

(6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

R657-20-27. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife.

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the U. S. Fish and Wildlife Service or the Division.

R657-20-28. Permission to Conduct Falconry Activities on Public or Private Lands.

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization from the affected Indian tribe.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah.

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

R657-20-29. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary flight feathers or rectrices from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the

bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

R657-20-30. Other Uses of Raptors.

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(i). Transfer must be reported to the Division within 10 business days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a standard paper form 3-186A, or FWS pdf i-381A via email.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i). The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) promoting or endorsing any business, company, corporation, or other organization; or

(iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-8, R657-20-9, and R657-20-10 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession

of a Special Purpose Abatement permit issued by the U.S. Fish and Wildlife Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the U.S. Fish and Wildlife Service.

KEY: wildlife, birds, falconry*
February 22, 2010 **23-17-7**
Notice of Continuation March 1, 2002 **50 CFR 21**

R657. Natural Resources, Wildlife Resources.
R657-24. Compensation for Mountain Lion, Bear or Eagle Damage.
R657-24-1. Purpose and Authority.

Under authority of Section 23-24-1, this rule provides the procedures, standards, requirements and limits for obtaining compensation for damages to livestock by mountain lion, black bear or an eagle.

R657-24-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-24-1(1).

(2) In addition:

(a) "Black bear" means Ursus americanus.

(b) "Fair market value" means the average commercial livestock prices from July 1 through June 30, as determined by the Utah Livestock and Auction Reporting Service.

(c) "Injury" means an act by a mountain lion or bear that results in the death of livestock within 30 days of the act or a permanent injury to livestock.

(d) "Livestock" means cattle, sheep, goats, or turkeys.

(e) "Mountain lion" means Felis concolor.

(f) "Eagle" means Haliacctus leucocephalus (bald eagle) and Aquila chrysaetos (golden eagle).

R657-24-3. Notification of Damage -- Payment of Damage Claims.

(1) When livestock are damaged by a mountain lion, bear or an eagle, the owner may receive compensation in accordance with Section 23-24-1(2).

(2)(a) Notification must be made in writing to one of the regional division offices within four working days of discovering the damage. A Proof of Loss form must then be submitted within 30 days after the original notification.

(b) Notification may be made orally to expedite field investigations, but it must be followed in writing within four working days after the damage is discovered. A Proof of Loss form must then be submitted within 30 days after the original written notification.

(3)(a) Claims for damage payments received from July 1 through June 30 are assessed and accepted or denied based on information reported on the livestock damage form.

(b) Claims accepted for damage payments are held until all damage claims for the July 1 through June 30 period have been collected.

(c) If the total amount of the damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims.

(d) Payments for eagle damage claims shall not be made until all accepted mountain lion and bear claims for a fiscal year have first been paid.

(4) Damage payments will be paid only for confirmed losses.

(5)(a) The division or animal damage control specialists will document on approved livestock damage forms the type and magnitude of livestock losses experienced by livestock producers.

(b) Where agreement with the type or magnitude of losses is not achieved by animal damage control specialists, a division representative shall follow up with an additional field investigation to assess damage claims.

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August 8, 2006 23-24-1
Notice of Continuation October 7, 2005 4-23-7

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.
R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities; and

(e) provide adequate protection to landowners who open their lands for hunting;

(f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by the landowner association member or the landowner association operator to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.

(d) "Landowner association " means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.

(e) "Landowner association member" means an individual landowner participating in the landowner association.

(f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU.

(g) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (3).

(b) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game or turkey CWMU.

(2)(a) No land parcel shall be included in more than one CWMU.

(b) Separate hunt boundaries by species on a CWMU are not permitted.

(3)(a) The Wildlife Board may renew a CWMU that is less than 10,000 acres with land parcels that adjoin corner-to-corner or containing noncontiguous parcels provided the CWMU legally possessed a CWMU Certificate of Registration during the previous year, allowing for acreage less than 10,000 contiguous acres, corner-to-corner land parcels, or noncontiguous land parcels.

(b) The Wildlife Board may approve a new CWMU for deer, pronghorn or turkey that is at least 5,000 contiguous acres provided:

(i) the property is capable of independently maintaining the presence of the respective species and harboring them during the period of hunting;

(ii) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(iii) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(iv) the CWMU contributes to meeting division wildlife management objectives.

(c) The Wildlife Board may renew or approve a new CWMU for deer, pronghorn, elk or moose that fails to meet the acreage or parcel configuration requirements in Subsection (1), or the exceptions in Subsection (3)(a) and(b), provided the following procedures are satisfied.

(i) the applicant submits a written request for special considerations to the CWMU Advisory Committee on or before August 1st annually;

(ii) the applicant submits to a one year waiting period while the CWMU Advisory Committee, Division and Wildlife Board consider, verify and decide the merits of the request for special considerations.

(iii) upon receipt of a request for special considerations, the CWMU Advisory Committee will immediately forward the request to DWR for review and recommendations.

(iv) the DWR will review the request for special considerations and make recommendations to the CWMU Advisory Committee within 180 days of receipt.

(v) the CWMU Advisory Committee will consider the request for special considerations and the Division's recommendations, and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(4)(a) Cooperative Wildlife Management Units organized for hunting big game or turkey, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU pursuant to Subsection R657-37-4(3)(a)(iv).

(5) Land parcels that adjoin corner-to-corner shall not be considered contiguous for the purpose of meeting minimum acreage requirements for new CWMU's except as specifically authorized by the Wildlife Board pursuant to Subsection (3)(c)).

(6) The intent is to establish CWMUs consisting of blocks of land that function well as hunting units. The Wildlife Board may deny a CWMU that meets technical requirements but does not constitute a good hunting unit.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1) The landowner association member must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game or turkey management unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by

the Wildlife Board for a period of three years, concurrent with the CWMU Certificate of Registration.

(b) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii)(1) dates that the general public with buck or bull CWMU permits will be allowed to hunt in accordance with R657-37-7(3)(a); or

(2) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(iv) a clear explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(v) an explanation of how the public is compensated by the CWMU when public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) County Recorder Plat Maps or equivalent maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(viii) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU;

(ix) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU, including the provisions provided in Section R657-37-7(6); and

(x) any request for reciprocal agreements.

(b) The division shall, review all CWMU Management Plans and make recommendations to the Wildlife Board.

R657-37-5. Application for Certificate of Registration.

(1) An application for a CWMU Certificate of Registration must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association member or landowner association operator.

(c) the name of the designated landowner association operator; and

(d) the nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for three years, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(7) A CWMU Certificate of Registration is issued on a three year basis and shall expire on January 31, providing:

(a) no changes in CWMU boundaries occur; and

(b) the certificate of registration is not suspended or revoked prior to the expiration date.

(8) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-5a. Amendments to a Certificate of Registration.

(1) A request for an amendment to a certificate of registration must be made in writing and submitted to the appropriate regional division office where the CWMU is located for any change in:

(a) permit numbers or allocation;

(b) season dates;

(c) landownership;

(d) operator; or

(e) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(2) Requests for amendments dealing with permit numbers, permit allocation or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur; and

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration and upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) All other requests for amendments shall be reviewed by the region and Wildlife Section and upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) A CWMU Certificate of Registration must be renewed every three years if no changes in CWMU boundaries occur, or annually if boundary changes occur and may be approved by the division, except as provided in Subsections (b) and (c).

(b) If any changes occur in the activities or information authorized in the current certificate of registration or CWMU Management Plan, the renewal must be considered for approval by the Wildlife Board.

(c)(i) A CWMU Certificate of Registration shall not be renewed if:

(A) thirty-four percent or more of the private lands included in the renewal application were not included in the previous certificate of registration; or

(B) thirty-four percent or more of the private land within the CWMU is under new ownership.

(ii) If a CWMU Certificate of Registration is not renewable under this Subsection, an application for a new CWMU Certificate of Registration must be completed as provided in Section R657-37-5.

(2) An application for renewal of a certificate of registration must be completed and returned to the regional division office where the CWMU is established no later than August 1.

(3) The renewal application must identify all changes from

the previous CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

(d) the name of the designated landowner association operator; and

(e) the nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(7) The division shall:

(a) approve the renewal Certificate of Registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) deny the renewal Certificate of Registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(iii) provide the applicant with information for seeking Wildlife Board review of the denial.

(8) Upon receiving the division's recommendation as provided in Subsection (b)(i), the Wildlife Board may consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(9) A CWMU Certificate of Registration for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3)(a)(x).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU; or

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permitteesa minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) two days to hunt with antlerless permits.

(b) General public CWMU permitees shall be allowed to hunt the entire CWMU except areas that are excluded from hunting to all permittees.

(i) a landowner association may identify in the management plan areas within the CWMU boundary that are open to specific species only. These areas must be open to all permit holders for that species.

(c) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU. The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession

a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

(a) does not have in their possession a CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a CWMU; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with Subsection (4), determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(4)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) During a three year management plan period, permit allocations for moose permits available in the public draw will not drop below 40% for bull moose and 60% for antlerless moose.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share Option	Bucks/Bulls	Does/Antlerless
1	60%	40%

Public's Share Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(5)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(10)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) The voucher donation is approved by the Wildlife Board prior to transfer;

(ii) No more than one voucher is donated per year by a landowner association;

(iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iv) The recipient of the voucher is identified prior to obtaining the Wildlife Board's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before April 1st the year the CWMU voucher is to be redeemed.

(11)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer or turkey; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(d)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

(A) meet the CWMU management plan objectives;

(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;

(C) provide positive hunter satisfaction; and

(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;

(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;

(F) allow all public hunters the option to hunt in November;

(e) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;

(f) antlerless elk seasons may be established August 15 through January 31;

(g) antlerless deer seasons may be established August 15 through December 31; and

(h) turkey seasons may be established the second Saturday in April through May 31.

(2) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Discipline or Violation.

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member or landowner association operator has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.

(1) A CWMU Advisory Committee shall be created consisting of seven members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative;

(e) one elected official; and

(f) one Regional Advisory Committee chairperson or Regional Advisory Committee member.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program;

(c) review failure to meet antlerless objectives;

(d) hear complaints from adjacent landowners; and

(e) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a) (b) (c) and (d).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

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R930. Transportation, Preconstruction.
R930-5. Establishment and Regulation of At-Grade Railroad Crossings.
R930-5-1. Purpose and Authority.

(1) The Utah Department of Transportation (the "Department") oversees all Public Highway-Rail Grade Crossings ("Crossings") in the state of Utah. Railroads have jurisdiction over and are responsible for the safety of private crossings. The Department's goals are to improve the safety for all users of a Crossing and provide for the efficient operation of trains and vehicles and pedestrians access through those Crossings. As part of this effort, the Department promotes the elimination of Crossings and at regular intervals, the Department:

(a) Reviews all existing Crossings in the state for safety deficiencies;

(b) Evaluates and approves the location of a new Crossing;

(c) Prescribes the type of improvements at a Crossing;

(d) Defines maintenance responsibility for a Crossing; and

(e) Determines funding apportionments for all Section 130 Crossing Projects.

(2) This rule describes procedures for evaluating and selecting a Crossing for improvement as well as for evaluating and selecting the type of improvements at a Crossing. Such improvements include, but are not limited to:

(a) The evaluation and selection of the type of Passive and Active Warning Devices;

(b) The process for evaluating and determining whether a Crossing should be grade separated; and

(c) The process for evaluating Quiet Zones as outlined in 49 CFR 222.

(3) This Rule outlines the responsibilities of the various parties with respect to the design, maintenance and funding for Crossing improvements.

(4) This Rule is authorized by Section 54-4-15 "Establishment and Regulation of Grade Crossings," Section 54-4-14, Section 72-1-201, Section 41-6a-1205 and Title 63G, Chapter 3 "Utah Administrative Rulemaking Act."

R930-5-2. Incorporation by Reference.

The following federal law, state law, federal agency manuals, association standards and UDOT technical requirements are incorporated by reference:

(1) 23 CFR 148 "Highway Safety Improvement Program" (2005);

(2) 23 CFR 646 "Railroads" (2009);

(3) 23 CFR 655 "Traffic Operations" (2009) "Manual of Uniform Traffic Control Devices (MUTCD)" (2003, with revisions 1 and 2 incorporated, dated 2007);

(4) 23 CFR 924 "Highway Safety Improvement Program" (2009);

(5) 49 CFR 209 "Accidents and Incidents" (2009);

(6) 49 CFR 212 "State Safety Participation Regulations" (2009);

(7) 49 CFR 222 "Use of Locomotive Horns at Public Highway-Rail Grade Crossing" (2009)

(8) 49 CFR 659 "Rail Fixed Guideway Systems; State Safety Oversight" (2009);

(9) "A Policy on Geometric Design of Highway and Streets", American Association of State Highway and Transportation Officials (AASHTO) (2004);

(10) "Railroad-Highway Grade Crossing Handbook", Federal Highway Adminstration (FHWA) (August 2007);

(11) "Preemption of traffic signals near Railroad Crossings", Institute of Traffic Engineers (ITE) (2004);

(12) "Manual for Railway Engineering", Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007; and

(13) "Standard Drawing ST-7 Pavement Marking and Signs at Railroad Crossings", Utah Department of Transportation (UDOT) (2008).

R930-5-3. Definitions.

(1) "Active Warning Device" means traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and Crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

(2) "Company" means any local district or utility company.

(3) "Diagnostic Team" means an appointed group of knowledgeable representatives of the parties of interest in a Crossing or group of Crossings.

(4) "FHWA" means the Federal Highway Administration, an agency within the United States Department of Transportation.

(5) "FRA" means the Federal Railroad Administration, an agency within the United States Department of Transportation.

(6) "FTA" means the Federal Transit Administration, an agency within the United States Department of Transportation.

(7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the area within the right-of-way.

(8) "Highway-Rail Grade Crossing" ("Crossing") means the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.

(9) "Highway Authority" means the Department or local governmental entity that owns or has jurisdiction over a Highway.

(10) "MUTCD" means the Manual of Uniform Traffic Control Devices as adopted in Section 41-6a-301.

(11) "Neutral Quadrant" means the quadrant that minimizes sight distance conflicts with immediate on-coming auto traffic. Generally, the neutral quadrant is on the far side of the tracks from the direction of vehicular travel.

(12) "Passive Warning Device" means those types of traffic control devices, including signs, markings and other devices located at or in advance of a Crossing to indicate the presence of a Crossing but which do not change aspect upon the approach or presence of a train.

(13) "Preliminary Engineering" means the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work.

(14) "PSC" means the Public Service Commission of the State of Utah.

(15) "Quiet Zone" means a section of a rail line at least one half mile in length that contains one or more consecutive public Crossings at which locomotive horns are not routinely sounded, see 49 CFR 222.

(16) "Railroad" means all rail carriers, whether publicly or privately owned, and common carriers, including line haul freight and passenger railroads, public transit districts, switching and terminal railroads, passenger carrying railroads such as rapid transit, and commuter and street railroads.

(17) "Section 130 Crossing Project" means a project that eliminates hazards and improves the safe operation of trains, vehicles, and pedestrians through a crossing and is authorized and funded by United State Code, Title 23, Section 130 Program funds.

R930-5-4. Type and Selection of Crossing Projects.

(1) Section 130 Crossing Projects:

(a) Section 130 Crossing Project types include, but are not limited to:

(i) Elimination of a Crossing by combining multiple Crossings;

(ii) Elimination of a Crossing by the relocation of a Highway;

(iii) Elimination of a Crossing by the construction of a new grade separation;

(iv) New safety improvements;

(v) Reconstruction of a Crossing grade separation structure; and

(vi) Repair of Crossing material, that would otherwise be the responsibility of the Railroad as prescribed in Subsection R930-5-8-(1)(b), if the repair of the Crossing material affects or is an integral part of the Crossing safety devices.

(b) The Department has established a process for the evaluation and selection of Section 130 projects that considers the potential reduction in the number and/or severity of collisions, the cost of the Crossing projects, and available resources. Specific methods for selecting and prioritizing Crossings for improvement include:

(i) The collection and maintenance of data utilizing the USDOT Grade Crossing Inventory to record Crossing data including, but not limited to the current physical condition, average daily traffic, and collision data associated with a Crossing.

(ii) An engineering study conducted on a Crossing at the request of a Highway Authority, Railroad, or company or using a priority list developed using the USDOT Accident Prediction Model. The purpose of the engineering study is to review the Crossing and its environment, identify the nature of any deficiencies and recommend alterative improvements. Specifically, an engineering study reviews Crossing characteristics, the existing traffic control system, and the Highway and Railroad characteristics. Based on the review of these conditions, an assessment of existing and potential hazards is made, deficiencies are identified and countermeasures are recommended.

(iii) System or corridor evaluations consider a Crossing as a component of a larger transportation system. The objective is to improve both safety and operations of the total system or segments of the system. In such cases, all Crossings within a corridor are evaluated and can be programmed for improvements. The optimal outcome of a corridor study involves a combination of engineering improvements and closures such that both safety and operations are highly improved.

(2) Non-Section 130 Crossing Projects:

(a) Non-Section 130 Crossing Project types include, but are not limited to:

(i) Crossing projects that use Railroad properties or involve adjustments to Railroad facilities required by Highway construction, but do not involve the elimination of hazards at a Crossing; and

(ii) Construction of a new Crossing at or over a Railroad track where the new Highway is not a relocation of an existing Highway.

(b) Non-Section 130 Crossing Projects will be evaluated and selected as part of the Department's normal STIP evaluation and approval process.

R930-5-5. Diagnostic Team.

(1) The role of the Diagnostic Team is to make recommendations to the Department for needed safety improvements at a Crossing.

(2) The Diagnostic Team reviews and evaluates proposed improvements for all Section 130 Crossing Projects and Non-Section 130 Crossing Projects. The Diagnostic Team reviews a Crossing when requested by a Highway Authority, Railroad, or Company when changes in Highway traffic patterns are proposed, when proposed Railroad traffic is determined to increase significantly, when complaints are made about a Crossing, when safety concerns arise, or when the Department receives a closure request. The Department will consider all recommendations made by the Diagnostic Team and, if appropriate, input received from the public at large (in accordance with Section R930-5-13) before issuing orders for the improvement of Crossings.

(3) The Department may also make formal findings and rulings as part of its process for evaluating Crossing improvements or during routine inspection of Crossings, independent of the Diagnostic Team.

(4) The Diagnostic Team is usually composed of the following team members:

(a) Chief Railroad Engineer for the Department;

(b) Representative from the Railroad;

(c) Representative from the appropriate Company, if applicable; and

(d) Representative from the Highway Authority (preferably from engineering or public works), and when available, and where appropriate public school district, law enforcement agency and invites with an interest in the Crossing.

(5) The role of the Diagnostic Team is to:

(a) Recommend the elimination of a Crossing;

(b) Recommend the type of safety improvements including, but not limited to Passive Warning Devices, Active Warning Devices, the type of Crossing material, improvements to Highway approaches, removal of foliage and brush, pedestrian facilities (including compliance with ADA requirements), and improvements to street lighting;

(c) Review all requests for a new Crossing;

(d) Review all requests to reclassify a Crossing from private to public;

(e) Recommend the Department conduct an engineering study to evaluate the need for a new overpass or other grade separation structure(s); and

(f) Recommend any other safety related changes to improve vehicle and pedestrian safety.

(6) Duties of Diagnostic Team members generally include participating in Crossings reviews and providing input into the Diagnostic Team recommendations. Specific duties include, but are not limited to the following:

(a) The Chief Railroad Engineer will, when applicable:

(i) Select a Section 130 Crossing Project from a corridor study, or based on a Highway Authority, Railroad, or Company request;

(ii) Schedule and notify Diagnostic Team members, and the FHWA, of the date and time of an upcoming review;

(iii) Conduct Crossing review and issue related reports in a reasonable time after the review and send copies to all those attending the review;

(iv) Review and approve Crossing improvements recommended by the Diagnostic Team;

(v) Determine Section 130 apportionments for Crossing projects;

(vi) Initiate all Notices of Intended Action for Crossing projects, as appropriate;

(vii) Review and approve the contractual requirements for Crossing projects using Section 130 Program funding;

(viii) Review all necessary field data obtained for the Crossing, including but not limited to site plan maps and photographs of the existing Crossing conditions.

(b) The Railroad representative shall provide all relevant data related to the Crossing, including, but not limited to train volumes, accident data and any other pertinent data regarding the Crossing;

(c) The Highway Authority representative shall:

(i) Provide relevant data regarding the Crossing including,

but not limited to Highway traffic volumes, planned road construction activities, and an approved master street plan for the Highway;

(ii) Invite local school district if appropriate and request that the local school district representative provide child access and bus routing plan information; and

(iii) Invite local law enforcement agency if appropriate and request that the law enforcement agency provide relevant data, including, but not limited to any safety concerns about the Crossing.

R930-5-6. Design of a Highway-Rail Grade Crossing.

(1) The Department shall approve or disapprove, as appropriate, the design of all Crossing improvements, including the addition of a new Crossing and treatments for a closed Crossing. All design plans shall include, if available:

(i) USDOT identification numbers;

(ii) Street addresses;

(iii) Highway milepost;

(iv) Railroad subdivision; and

(v) Railroad milepost for the Crossing.

(2) Design of Crossing related facilities that are the responsibility of the Railroad shall conform to the specifications and design standards of the Railroad.

(3) Design of Crossing related Highway approaches, those areas two feet outside of rail that are the responsibility of the Highway Authority shall conform to the specifications and design standards of the Highway Authority, subject to approval by the Department. Where a Highway Authority does not have an approved standard, Department standard drawings for the design of the Crossing approaches apply.

(4) Traffic control devices installed as part of any Crossing improvements shall comply with the MUTCD. Required clearances for all devices shall conform to the MUTCD and any variances from MUTCD requirements must be approved by the Department.

(5) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks.

(6) The Railroad is responsible for the design of Railroad Active Warning Devices, including the location, activation circuitry, hardware, and software in accordance with MUTCD.

(a) When Active Warning Devices are within 200 feet of a traffic signal, the Highway Authority and the Railroad shall coordinate the design of the interconnect between the traffic signal and Automatic Warning Device to ensure sufficient preemption time to clear potential vehicle stacking across a Crossing.

(b) Signal houses for Active Warning Devices shall be located in the Neutral Quadrant unless approved by the Department.

(7) The Railroad is responsible for the design of all required Railroad Passive Warning Devices located within the Railroad road right-of-way in accordance with the MUTCD, specific Passive Warning Devices include:

(a) Sign R15-1 (Crossbuck);

(b) Sign R15-2 (Number of tracks);

(c) Sign R1-1 (STOP);

(d) Sign R1-2 (Yield);

(e) Sign R15-3 (Exempt);

(f) Sign R8-9 (Tracks out of Service).

(8) Design and installation of all other Passive Warning Devices, signs, and pavement markings is the responsibility of the Highway Authority. Design and location of the devices shall be in accordance with the MUTCD.

(9) For clearances, refer to the Manual for Railway Engineering, Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007.

R930-5-7. Highway Authority and Railroad Responsibility to Request Approval and Arrange for the Installation of Crossing Improvements.

(1) When a Highway Authority widens or constructs a new Highway, the Highway Authority shall be responsible to request a Diagnostic Team review of the Crossing and arrange by agreement with the Railroad to design and install all required improvements concurrent with its request for approval from the Department:

(2) Prior to approving new residential, commercial, or industrial development within 1000 feet of a Crossing, the Highway Authority shall request a Diagnostic Team review to assess the potential traffic impacts at the Crossing.

(3) Before a Highway Authority approves increased development that changes the conditions of a Crossing by significantly increasing traffic volumes, the Highway Authority plans shall be approved by the Department.

(a) No new access openings can be opened within 250' of a Crossing unless approved by the Department.

(b) The Highway Authority shall arrange by agreement with the Railroad for any required Railroad facility changes ordered by the Department.

(4) The Highway Authority is responsible for the installation of all Passive Warning Devices outside the Railroad right-of-way, excepting those signs listed in Section R930-5-6.6, or unless a separate agreement applies.

(5) Before a Railroad modifies any safety related devices or the physical layout of a Crossing, the Railroad shall request a Diagnostic Team review of the proposed changes and request Department approval of all Crossing related designs.

(6) A Highway Authority, Railroad, or Company making a request for a new Crossing or the reclassification of a Crossing from private to public shall provide the Department with an approved master street plan from the appropriate jurisdiction showing the elimination or combination of existing Crossings and/or other safety improvements that enhance the overall safety of the corridor before a new Crossing or reclassification of a Crossing from private to public will be approved.

(a) A Highway Authority, Railroad, or Company requesting a new Crossing or reclassification of a Crossing from private to public will mutually arrange by agreement for the proposed new Crossing or reclassification of a Crossing before seeking Department approval of the change.

R930-5-8. Maintenance.

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be

adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a separate agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

R930-5-9. Funding Authorization and Apportionment of Cost for Section 130 Crossing Projects.

(1) Funding Authorization.

(a) Section 130 Crossing Projects:

(i) Costs associated with a FHWA authorized and approved program are eligible for federal participation. Eligible costs incurred in an approved program prior to authorization by FHWA are not reimbursable, but may be included as part of the Railroad share of the project cost where such a share is required. Eligible costs include, but are not limited to cost associated with environmental clearance, Preliminary Engineering, and right-of-way acquisition.

(ii) Prior to FHWA issuing its authorization to advertise the construction of a Crossing project, the Crossing project must receive environmental clearance; the plans, specifications and estimates must be approved by FHWA; and any proposed agreement between the Railroad and the Department must be reviewed and approved by FHWA, as per FHWA's stewardship agreement with the Department.

(b) Non-Section 130 Crossing Projects:

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

(2) Apportionment of Costs.

(a) Section 130 Crossing Projects:

(i) Apportionment of costs for installation, maintenance, and reconstruction of safety related improvements at a Crossing shall be in accordance with 23 CFR 646 and Section 54-4-15.

(ii) When a Highway Authority widens a Highway, the Highway Authority shall fund all improvements including, but not limited to Passive Warning Devices, Active Warning Devices, Crossing material, and other improvements as ordered by the Department in consultation with the Diagnostic Team.

(iii) The Department will evaluate each Crossing project to determine the extent to which, if any, the Crossing projects benefits the respective parties. If a Crossing project is determined not to benefit a party, the party will not be required to participate in the funding.

(b) Non-Section 130 Crossing Projects.

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

R930-5-10. Railroad and Highway Authority Agreements.

(1) Where construction of a Section 130 Crossing Project requires use of Railroad properties or adjustments to Railroad facilities, the Department will prepare an agreement with the Railroad.

(2) Master agreements between the Department and a Railroad on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations, and provisions required in conjunction with work performed on all Crossing projects.

(3) On a project-by-project basis, the written agreement between the Department and the Railroad shall include the following minimum requirements:

(a) Reference to appropriate federal regulations;

(b) Detailed statement of the work to be performed by each party;

(c) The extent to which the Railroad is required to adjust its facilities;

(d) The Railroad's share of the project cost;

(e) An itemized estimate of the cost of the work to be performed by the Railroad;

(f) Method to be used for performing the work, either by Railroad forces or by contract;

(g) Maintenance responsibility;

(h) Form, duration, and amounts of any needed insurance; and

(i) Appropriate reference to or identification of plans and specifications.

(4) On matching fund agreements between the Department and a Highway Authority, the written agreement shall include the following minimum requirements:

(a) Description of work and location, city, county, and state;

(b) Reference to federal regulations that matching funds will be provided by the Highway Authority;

(c) Detailed statement of work to be preformed by each party regarding design, agreements, inspection, and maintenance;

(d) Statement of finances of project and matching funds to be provided by Highway Authority, deposits, invoices, and cost overruns or under runs.

(5) Agreements for industry track Crossings are prepared between the Highway Authority and the industry.

(6) In order that a Crossing project shall not become unduly delayed, the Department shall consider a six-month period from issuance of the Railroad agreement to be adequate for completion of work by the Railroad involved. Should more than the specified period elapse, the Department shall require

the Railroad to proceed with the work covered by the agreement under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

R930-5-11. Crash Reporting.

A Railroad is required to report crashes resulting in injury or death to an individual or damage to equipment, roadbed, or autos occurring at a Crossing to the Department's Chief Railroad Engineer within 2 hours of the incident. Initial notification must include the USDOT Crossing number, street address, municipality, time of incident, train identifier, and contact phone number for further information. Written crash reports shall be submitted to the Department within 30 days of the incident. Current Federal Railroad Administration (FRA) form F 6180.57 shall be used to report a crash.

R930-5-12. Exemption of Railroad Crossings.

Under Section 41-6a-1205, certain vehicles are required to stop at all Crossings unless a Crossing is signed as exempt. Recommendation to exempt a Crossing is made by a Diagnostic Team and the Department is responsible for issuing the exemption order. The following Crossings are not eligible for exemption under this Section:

(1) Mainline Crossings with Passive Warning Devices only;

(2) Crossings within approved Quiet Zones; and

(3) Crossings where insufficient sight distance exists.

R930-5-13. Notice of Intended Action.

(1) Public notification of a public hearing opportunity is required, in conformance with Section R930-2, when the Department is considering a proposal to close a Crossing, add a track at a Crossing, or construct a new Crossing. It is the responsibility of the Highway Authority, Railroad, or Company requesting the proposed action, in consultation with the Department, to carry out the requirements of this section unless otherwise agreed to by the Department.

(2) In instances where the action proposed by the Department does not substantially affect the public, the Department may waive the requirement to notice a public hearing opportunity, provided the affected Diagnostic Team members concur in writing.

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