

R21. Administrative Services, Debt Collection.**R21-3. Debt Collection Through Administrative Offset.****R21-3-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-8-204(2)(f), which authorizes the Office of State Debt Collection to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

- (a) name of entity;
- (b) social security number or federal employer's identification number of the entity;
- (c) amount of delinquent account receivable; and

(2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the state's Accounting System.

R21-3-7. Notification and Response.

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-8. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

(a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the

administrative offset; plus

(b) the amount identified in Subsection R21-3-7(3) to satisfy the delinquent account receivable.

R21-3-9. Release of Offset Funds by the Division.

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

R21-3-10. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-11. Administrative Fee.

Pursuant to Section 63A-8-201(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable administrative offset**August 13, 2002****63A-8-204(2)(f)****Notice of Continuation August 29, 2007**

R27. Administrative Services, Fleet Operations.**R27-1. Definitions.****R27-1-1. Authority.**

(1) This rule is established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.

R27-1-2. Definitions.

In addition to the terms defined in Section 63A-9-101, as used in Title 63A, Chapter 9, or these rules the following terms are defined.

(1) "Accident" means any occurrence, in which a state vehicle is involved in a mishap resulting in harm or injury to persons, or damage to property, regardless of total cost of treatments or repairs. It may also be referred to as an incident.

(2) "Accident Review Committee (ARC)" means the panel formed by each agency to review accidents in which agency employees are involved and make a determination as to whether or not said accidents were preventable.

(3) "ACD Codes" means the American Association of Motor Vehicle Administrators Code Dictionary Codes.

(4) "Agency" has the same meaning as provided in Section 63A-9-101(1)(a),(b), and (c).

(5) "Agency Motor Vehicle Policy (AMV)" means any policy written by an agency that covers any agency-specific needs involving the use of a state vehicle that are not addressed by state vehicle rules. Agencies shall not adopt policies that are less restrictive than the State vehicle rules.

(6) "Alternative Fuel Vehicles (AFV)" means any vehicle designed and manufactured by an original equipment manufacturer or a converted vehicle designed to operate either on a dual-fuel, flexible-fuel, or dedicated mode while using fuels other than gasoline or diesel. Examples of alternative fuel types are electricity, bio-diesel, fossil-fuel hybrids, compressed natural gas, propane, hydrogen, methanol, ethanol, and any other vehicle fuel source approved by the Federal government's Department of Energy (DOE). AFVs shall be identified and tracked in DFO's fleet information system.

(7) "Authorized Driver" means any employee, as defined in Section 63G-7-102, of an agency who has been identified by the agency in DFO's Fleet Information System as having the authority, within his or her scope of employment, to operate a state vehicle on the agency's behalf, who holds a valid driver license, and has completed the specific training and other criteria required by DFO, Risk Management or employing agency for the vehicle type that will be operated. An Authorized Driver may also be referred to as operator, employee or customer.

(8) "Authorized Passenger" means any state employee acting within the scope of his or her employment, or any other person or animal whose transport is either necessary for the performance of the authorized driver's employment duties, or has been pre-approved by the appropriate department head to accompany an authorized driver.

(9) "Capital only lease vehicle" means any vehicle with a lease designed to recover depreciation cost, (vehicle cost less salvage value spread over the estimated useful life of the vehicle, less the incremental cost of Alternative Fuel Configuration), plus overhead costs only. Capital only leases are subject to DFO approval.

(10) "Citizen Complaints" means complaints lodged by citizens through the DFO website.

(11) "Commute Use" means an employee driving a state vehicle from the employee's place of business to the employee's place of residence more than five calendar days per month.

(12) "Compressed Natural Gas Vehicle (CNG)" means any vehicle that may be fueled with compressed natural gas.

(13) "Department" means the Department of

Administrative Services.

(14) "Division" has the same meaning as provided by Section 63A-9-101(4).

(15) "Driver Eligibility Board (DEB)" means the panel formed for the purpose of determining a state vehicle driving privileges.

(16) "Drivers License Points" means points placed on a drivers record by the Department of Motor Vehicles in response to driving violations.

(17) "Emergency Vehicle" means any state vehicle which is primarily used for the purpose of providing law enforcement and public safety services as defined in Section 41-6a-102(3), or fire service, or emergency medical services.

(18) "Expansion vehicle" means any vehicle purchased when an agency requires an additional vehicle in order to complete the duties assigned to the requesting agency and will increase the size of the state fleet. The purchase of an expansion vehicle requires legislative approval.

(19) "Extreme Duty Vehicle" a designation used for preventive maintenance purposes, means, but is not limited to, emergency vehicles and vehicles driven primarily off-road.

(20) "Feature" means any option or accessory that is available from the vehicle manufacturer.

(21) "Fixed costs" means, for the purposes of this rule, costs including depreciation, overhead, licensing, betterment, insurance, and title costs, as well as registration fees.

(22) "Fleet Vehicle Advisory Committee" means the panel formed for the purpose of advising DFO, after input from user agencies, as to the vehicle, included features, and equipment that will constitute the standard vehicle for each class in the fleet.

(23) "FO number" means a vehicle specific number assigned to each state vehicle for tracking purposes.

(24) "Fuel Network" means the state program that provides an infrastructure for fueling state vehicles.

(25) "Full Service Lease" means a type of lease designed to recover depreciation costs, overhead costs and all variable costs.

(26) "Heavy-duty Vehicle" means any motor vehicle having a gross vehicle weight range (GVWR) greater than 8,500 pounds. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(30), with a GVWR greater than 8,500 pounds. Heavy-duty vehicles shall be tracked in DFO's fleet information system.

(27) "Light-duty Vehicle" means any motor vehicle having a gross vehicle weight rating (GVWR) of 8,500 pounds or less. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(30), with a GVWR of 8,500 pounds or less. Light-duty vehicles shall be tracked in DFO's fleet information system.

(28) "Miscellaneous Equipment" means any equipment, enhancement or accessory that is installed on or in a motor vehicle by persons other than the original vehicle manufacturer, and other non-fleet related equipment. Includes, but is not limited to, light bars, 800 MHz radios, transits, surveying equipment, traffic counters, semaphores, and diagnostic related equipment. Miscellaneous Equipment shall be tracked in DFO's fleet information system.

(29) "Motor Pool" generally, means any vehicle that is made available to agencies for lease on a short-term basis.

(30) "Motor Vehicle" has the same meaning as provided by Section 63A-9-101(6).

(31) "Motor Vehicle Review Committee (MVRC)" means the panel formed to advise the Division of Fleet Operations (DFO), as required by Subsection 63A-9-301(1). The duties of the MVRC are as specified in Section 63A-9-302.

(32) "Moving Violation" means an infringement of the law while operating a moving vehicle.

(33) "Non-Preventable Accident" means any occurrence

involving an accident/incident in which everything that could have been reasonably done to prevent it was done and the accident/incident still occurred. Non-preventable accidents shall include vandalism of state vehicles being used to conduct state business.

(34) "Non-road vehicle" means a vehicle, regardless of GVWR, that is not licensed for on-road use. Includes, but is not limited to, vehicles used principally for construction and other non-transportation purposes. Golf carts, farm tractors, snowmobiles, forklifts and boats are examples of vehicles in this category. Non-road vehicles shall be tracked in DFO's fleet information system.

(35) "Other Equipment" means vehicles and equipment not specifically identified in other standard reporting categories.

(36) "Personal Use" means the use of a state vehicle to conduct an employee's personal affairs, not related to state business.

(37) "Preventable Accident" means any occurrence involving a state vehicle, which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent, or where it occurred, in which the authorized driver in question failed to do everything that could have reasonably been done to prevent it.

(a) Preventable accidents are not limited to collisions.

(b) As used in this rule, "preventable accidents" include, but are not limited to: damage to the interior of the state vehicle due to improperly locked doors, smoke or burn damage caused by smoking in the vehicle or lack of general care of the vehicles interior.

(38) "Preventive Maintenance (PM)" means vehicle services that are conducted at regular time intervals to deter mechanical breakdowns, including, but not limited to, lube, oil and filter changes.

(39) "Regular Duty Vehicle" a designation used for preventive maintenance purposes, means a vehicle that is driven primarily on paved roads under normal driving conditions.

(40) "Replacement cycle" means the criteria established to determine when the replacement of a state vehicle is necessary. A replacement cycle has a time and mileage element, and is established according to vehicle type and use.

(41) "Replacement vehicle" means a vehicle purchased to replace a state vehicle that has met replacement cycle criteria.

(42) "Service Level Agreement (SLA)" means an agreement, signed annually, between an agency and DFO in which the agency agrees to follow all rules, policies and procedures published by DFO concerning the use of state vehicles. This document also clearly defines the level of service between DFO and agencies.

(43) "Standard State Fleet Vehicle" is the vehicle designated by DFO as the default replacement vehicle for the state.

(44) "State of Utah Fuel Card" means a purchase card issued to vehicles by the fuel network program, to be used when purchasing fuel. Fluids and minor miscellaneous items that may also be purchased with the "State of Utah Fuel Card" cannot exceed the monthly monetary limits placed on such purchases by DFO/Fuel Network, unless otherwise authorized.

(45) "State vehicle" for the purposes of this rule, has the same meaning as provided by Subsection 63A-9-101(7).

(46) "Take-home vehicle" means a state vehicle assigned to be driven to and from an employee's place of residence and their assigned work location for more than five calendar days per month.

(47) "Unique Motorized Equipment" (UME) means high-cost vehicles and equipment such as trains; locomotives; airplanes; jets; mobile power stations and helicopters. Unique equipment shall be tracked in DFO's fleet information system.

(48) "Variable costs" means costs including, but are not limited to fuel, oil, tires, services, repairs, maintenance and

preventive maintenance.

(49) "Vehicle Identification Number (VIN)" means the number issued by the vehicle manufacturer to identify the vehicle in the event of a theft; this number can be found on the driver's side of the dashboard below the windshield.

(50) "Vendor" means any person offering sales or services for state vehicles, such as preventive maintenance or repair services.

KEY: definitions

April 20, 2009

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R27. Administrative Services, Fleet Operations.**R27-2. Fleet Operations Adjudicative Proceedings.****R27-2-1. Informal Proceedings.**

(1) The following categories of proceedings are hereby designated as informal proceedings under the Utah Administrative Procedures Act, Section 63G-4-202:

(a) Determinations regarding operation of Fleet Operations within state government.

(b) Any agency action not exempted under the Administrative Procedures Act, Section 63G-4-102 et seq.

(2) Procedures governing informal adjudicatory proceedings:

(a) No response need be filed to the notice of agency action or request for agency action.

(b) The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for agency action, otherwise, at the discretion of the agency head no hearing will be held.

(c) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(d) A hearing will be held only after timely notice of the hearing has been given.

(e) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

(f) No person, as defined in the Utah Administrative Procedures Act, Subsection 63G-4-103(1)(g), may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(g) Any hearing held under this rule is open to all parties.

(h) Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency head shall issue a written decision stating the decision, the reasons for the decision, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(i) The agency head's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing. Decision from the Division may be appealed to the Executive Director of the Department of Administrative Services.

(j) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(k) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the agency and may be appealed to the appropriate district court.

KEY: appellate procedures, administrative procedures
July 15, 1996 **63G-4-102**
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R27. Administrative Services, Fleet Operations.**R27-3. Vehicle Use Standards.****R27-3-1. Authority and Purpose.**

(1) This rule is established pursuant to Section 63A-9-401(1)(d), which authorizes the Division of Fleet Operations (DFO) to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

(2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

R27-3-2. Agency Contact.

(1) Each agency, as defined in Subsection 63A-9-101, shall appoint and designate, in writing, a main contact person from within the agency to act as a liaison between the Division of Fleet Operations and the agency.

R27-3-3. Agency Authorization of Drivers.

(1) Agencies authorized to enter information into DFO's fleet information system shall, for each employee, as defined in section 63G-7-102(2), Utah Governmental Immunity Act, to whom the agency has granted the authority to operate a state vehicle, directly enter into DFO's fleet information system, the following information:

- (a) Driver's name and date of birth;
- (b) Driver license number;
- (c) State that issued the driver license;
- (d) Each Risk Management-approved driver training program(s) taken;
- (e) Date each driver safety program(s) was completed;
- (f) The type vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into DFO's fleet information system shall provide the information required in paragraph 1 to DFO for entry into DFO's fleet information system.

(3) For the purposes of this rule, any employee, as defined in section 63G-7-102(2), whose fleet information system record does not have all the information required in paragraph 1 shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, employees, as defined in section 63G-7-102(2), whose names have been entered into DFO's fleet information system as authorized drivers shall have:

- (a) a valid driver license for the type and class of vehicle being operated;
- (b) completed the driver safety course required by DFO and the Division of Risk Management for the type or class of vehicle being operated; and
- (c) met the age restrictions imposed by DFO and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

- (a) does not have a valid driver license for the type or class of vehicle being operated; or
- (b) has not completed all training and/or safety programs required by either DFO or the Division of Risk Management for the type or class of vehicle being operated; or
- (c) does not meet the age restrictions imposed by either DFO or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each employee, as defined in section 63G-7-102(2), whose name appears in the DFO fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any employee, as defined in section 63G-7-102(2), who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

R27-3-4. Authorized and Unauthorized Use of State Vehicles.

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) The use of a state vehicle for travel outside the continental U.S. shall require the approval of the director of the employing department, the director of DFO, and the director of the Division of Risk Management. All approvals must be obtained at least 30 days from the departure date. The employing agency shall, prior to the departure date, provide DFO and the Division of Risk Management with proof that proper automotive insurance has been obtained. The employing agency shall be responsible for any damage to vehicles operated outside the United States regardless of fault.

(4) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

- (a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.
- (b) Transporting hitchhikers.
- (c) Transporting acids, explosives, weapons, ammunition, hazardous materials, and flammable materials. The transport of the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of Subsection 41-6a-502, (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration), Subsection 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of Subsection 41-6a-510, (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(36). Generally, except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et seq., the unauthorized use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-5. Personal Use Standards.

(1) Personal use of state vehicles is not allowed without the direct authorization of the Legislature. The following are circumstances where personal use of state vehicles are approved:

(a) Elected and appointed officials that receive a state vehicle as a part of their respective compensation package, and have been granted personal use privileges by state statute.

(b) Sworn law enforcement officers, as defined in Utah Code 53-13-103, whose agencies have received funding from the legislature for personal use of state vehicles.

(c) In an emergency, a state vehicle may be used as necessary to safeguard the life, health or safety of the driver or passenger.

(2) An employee or representative of the state spending at least one night on approved travel to conduct state business, may use a state vehicle in the general vicinity of the overnight lodging for the following approved activities:

(a) Travel to restaurants and stores for meals, breaks and personal needs;

(b) Travel to grooming, medical, fitness or laundry facilities; and

(c) Travel to and from recreational activities, such as to theaters, parks, or to the home of friends or relatives, provided said employee or representative has received approval for such travel from his or her supervisor.

(d) Pursuant to the provisions of R27-7-1 et seq., the unauthorized personal use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-6. Application for Commute or Take Home Use.

(1) Each petitioning agency shall, for each driver being given commute or take home privileges, annually complete and submit an online take home form from the DFO website. Submitted take home information will generate a new form that must be signed by the employee, direct supervisor of the employee, and the executive director of the agency.

(2) DFO shall enter the approved commute or take home request into the fleet information system and provide an identification number to both the driver and the agency.

(3) All approvals for commute or take home privileges shall expire at the end of the calendar year on which they were issued and DFO shall notify the agency of said expiration. Agencies shall be responsible for submitting any request for annual renewal of commute or take home use privileges.

(4) Commute use is, unless specifically exempted under R27-3-8, infra, considered a taxable fringe benefit as outlined in IRS publication 15-B. All approved commute use drivers will be assessed the IRS imputed daily fringe benefit rate while using a state vehicle for commute use.

(5) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIA C C T 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis.

R27-3-7. Criteria for Commute or Take Home Privilege Approval.

(1) Commute or Take Home use may be approved when one or more of the following conditions exist:

(a) 24-hour "On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage. Each driver is required to keep a complete list of all call-outs for renewal of the take home privilege the following year. Agencies may use DFO's online forms to track take home mileage.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package.

(2) The trip log must be created for the first and last trip of the day for all take-home vehicles.

R27-3-8. Exemptions from IRS Imputed Daily Fringe Benefits.

(1) In accordance with IRS publication 15-b, employees with an individual permanently assigned vehicle are exempt from the imputed daily fringe benefit for commute use when the permanently assigned vehicles are either:

(a) Clearly marked police and fire vehicles;

(b) Unmarked vehicles used by law enforcement officers if the use is specifically authorized;

(c) An ambulance or hearse used for its specific purpose;

(d) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 lbs;

(e) Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;

(f) A passenger bus with the capacity of at least 20 passengers used for its specific purpose;

(g) School buses;

(h) Tractors and other special purpose farm vehicles;

(i) A pick up truck with a loaded gross vehicle weight of 14,000 lbs or less, if it has been modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a pick up truck qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business or function and meets either of the following requirements:

(i) It is equipped with at least one of the following items:

(a) A hydraulic lift gate;

(b) Permanent tanks or drums;

(c) Permanent sideboards or panels that materially raise the level of the sides of the truck bed;

(d) Other heavy equipment (such as an electronic generator, welder, boom or crane used to tow automobiles or other vehicles).

(ii) It is used primarily to transfer a particular type of load (other than over public highways) in a construction, manufacturing processing, farming, mining, drilling, timbering or other similar operation for which it is specifically modified.

(j) A van with a loaded gross vehicle weight of 14,000 lbs or less, if it has been specifically modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a van qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting or other advertising associated with your trade, business and has a seat for the driver only (or the driver and one other person) and either of the following items:

(i) permanent shelving that fills most of the cargo area; or

(ii) An open cargo area and the van always carries merchandise, material or equipment used in your trade, business or function.

(2) Questions relating to the imputed daily taxable fringe benefit for the use of a state vehicle and exemptions thereto should be directed to DFO.

R27-3-9. Enforcement of Commute Use Standards.

(1) Agencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule. Agencies shall not adopt policies that are less stringent than the standards established in these rules.

(2) Commute or take home use that is unauthorized shall result in the suspension or revocation of the commute use privilege by the agency. Additional instances of unauthorized commute or take home use may result in the suspension or revocation of the state driving privilege by the agency.

R27-3-10. Use Requirements for Monthly Lease Vehicles.

(1) Agencies that have requested, and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of DFO.

(2) The provisions of Rule R27-4 shall govern agencies when requesting a monthly lease.

(3) Under no circumstances shall the total number of occupants in a monthly lease full-size passenger van exceed ten (10) individuals, the maximum number recommended by the Division of Risk Management.

R27-3-11. Use Requirements for Daily Motor Pool Vehicles.

(1) DFO offers state vehicles for use on a daily basis at an approved daily rental rate. Drivers of a state vehicle offered through the daily pool shall:

(a) Be an authorized driver whose name and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated. In the event that any of the information required by R27-3-3(1) has not been entered in DFO's fleet information system, the rental vehicle will not be released.

(b) Read the handouts, provided by DFO, containing information regarding the safe and proper operation of the vehicle being leased.

(c) Verify the condition of, and acknowledge

responsibility for the care of, the vehicle prior to rental by filling out the daily motor pool rental form provided by daily rental personnel.

(d) Report the correct odometer reading when refueling the vehicle at authorized refueling sites, and when the vehicle is returned. In the event that incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(e) Return vehicles with a full tank of fuel. Agencies shall be assessed a fee for vehicles that are returned with less than a full tank of fuel.

(f) Return rental vehicles in good repair and in clean condition.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(g) Call to extend the reservation in the event that they need to keep rental vehicles longer than scheduled. Agencies shall be assessed a late fee, in addition to applicable daily rental fees, for vehicles that are not returned on time.

(h) Use their best efforts to return rented vehicles during regular office hours. Agencies may be assessed a late fee equal to one day's rental for vehicles that are not returned on time.

(i) Call the daily pool location, at least one hour before the scheduled pick-up time, to cancel the reservation. Agencies shall be assessed a fee for any unused reservation that has not been canceled.

(j) Not place advertising or bumper stickers on state vehicles without prior approval from DFO.

(2) The vehicle shall be inspected upon its return. The agency shall either be held responsible for any damages not acknowledged prior to rental, or any applicable insurance deductibles associated with any repairs to the vehicle.

(3) Agencies are responsible for paying all applicable insurance deductibles whenever a vehicle operated by an authorized driver is involved in an accident.

(4) The DFO shall hold items left in daily rental vehicles for ten days. Items not retrieved within the ten-day period shall be turned over to the Surplus Property Office for sale or disposal.

R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven-passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for full-size passenger vans may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the total number of occupants exceed the maximum number of passengers recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only.

Passengers shall not be transported in cargo area of said vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual-fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

R27-3-13. Alcohol and Drugs.

(1) No authorized driver shall operate or be in actual physical control of a State vehicle in violation of subsection 41-6a-502, any ordinance that complies with the requirements of subsection 41-6a-510, or subsection 53-3-231.

(2) Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs(DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, may have his or her state driving privileges withdrawn, suspended or revoked.

(3) No operator of a state vehicle shall transport alcohol or illegal drugs of any type in a State vehicle unless they are:

(a) Sworn peace officers, as defined in Section 53-13-102, in the process of investigating criminal activities;

(b) Employees of the Alcohol Beverage Control Commission conducting business within the guidelines of their daily operations; or

(c) investigators for the Department of Commerce in the process of enforcing the provisions of section 58-37, Utah Controlled Substances Act.

(4) Except as provided in paragraph 3, above, any individual who uses a state vehicle for the transportation of alcohol or drugs may have his or her state driving privileges withdrawn, suspended or revoked.

R27-3-14. Violations of Motor Vehicle Laws.

(1) Authorized drivers shall obey all motor vehicle laws while operating a state vehicle.

(2) Any authorized driver who, while operating a state vehicle, receives a citation for violating a motor vehicle law shall immediately report the receipt of the citation to their respective supervisor. Failure to report the receipt of a citation may result in the withdrawal, suspension or revocation of State driving privileges.

(3) Any driver who receives a citation for violating a motor vehicle law while operating a state vehicle shall attend an additional Risk Management-approved mandatory defensive driver training program. The failure to attend the additional mandatory defensive driver training program shall result in the loss of state driving privileges.

(4) Any driver who receives a citation for a violation of motor vehicle laws, shall be personally responsible for paying fines associated with any and all citations. The failure to pay fines associated with citations for the violation of motor vehicle laws may result in the loss of state driving privileges.

R27-3-15. Seat Restraint Use.

(1) All operators and passengers in State vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in State vehicles shall be placed in proper safety restraints for their age and size as stated in Subsection 41-6a-1803.

R27-3-16. Driver Training.

(1) Any individual shall, prior to the use of a state vehicle, complete all training required by DFO or the Division of Risk Management, including, but not limited to, the defensive driver training program offered through the Division of Risk Management.

(2) Each agency shall coordinate with the Division of Risk Management, specialty training for vehicles known to possess unique safety concerns.

(3) Each agency shall require that all employees who operate a state vehicle, or their own vehicles, on state business as an essential function of the job, or all other employees who operate vehicles as part of the performance of state business, comply with the requirements of Division of Risk Management rule R37-1-8(5).

(4) Agencies shall maintain a list of all employees who have completed the training courses required by DFO, Division of Risk Management and their respective agency.

(5) Employees operating state vehicles must have the correct license required for the vehicle they are operating and any special endorsements required in order to operate specialty vehicles.

R27-3-17. Smoking in State Vehicles.

(1) All multiple-user state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.

(2) Agencies that allow smoking in exclusive use vehicles shall be responsible for the cost of necessary repairs to, or refurbishment of, any vehicle in which smoking has been permitted to insure that the vehicle is suitable for reassignment, reallocation or sale when the vehicle reaches the applicable replacement criteria.

KEY: state vehicle use

June 17, 2008

Notice of Continuation November 29, 2010

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

R27. Administrative Services, Fleet Operations.**R27-7. Safety and Loss Prevention of State Vehicles.****R27-7-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations (DFO) to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify DFO, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or DFO verifies the license has been reinstated.

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a three (3) year period; or

(b) The authorized driver has 4 or more moving violations within a 12 month period; or

(c) The authorized driver has been convicted of any of the following Utah "ACD" codes:

(i) A22 - Driving under the influence of drugs; or

(ii) B23 - Driving while denied; or

(iii) B25 - Driving on revocation; or

(iv) B26 - Driving while suspended; or

(v) M84 - Reckless driving; or

(vi) S95 - Speed contest (racing) on road open to traffic prior to 5/1/2006; or

(vii) S95 - Speed contest (racing) (1st 60 days-2ndw/ I 3 yrs 90 days); or

(viii) U01 - Fleeing or evading police or roadblock; or

(ix) U05 - Using a motor vehicle to aid and abet a felon;

or

(x) U31 - Violation resulting in fatal accident; or

(xi) MEC - Driving under the influence of drugs metabolite (MEC); or

(xii) A21 - Driving under the influence of alcohol; or

(xiii) B02 - Hit and run/fatal; or

(xiv) B03 - Hit and run - injury; or

(xv) B04 - Hit and run - property damage/regular operator;

or

(xvi) ARD - Alcohol Restricted Driver; or

(xvii) A08 - DUI of alcohol with BAC at or over .08; or

(xviii) A08 - Driving under the influence alcohol and drugs; or

(xix) A08 - Driving under the influence w/impaired; or

(xx) A08 - Driving under the influence w/personal injury;

or

(xxi) A08 - Driving under the influence w/minor in vehicle; or

(xxii) A08 - Driving under the influence in a CMV; or

(xxiii) A25 - Impaired Driving; or

(xxiv) A41 - Any Violation of ignition interlock device under 41-6a-518; or

(xxv) A50 - Motor vehicle used in the commission of a felony involving the manufacturing, distributing or dispensing a controlled substance; or

(xxvi) ACL - Violation alcohol conditional license; or

(xxvii) B01 - Hit and Run/failure to stop render aid/property dmg/comm only; or

(xxviii) B14 - Failure to reveal identity after fatal accident - commercial only; or

(xxix) B23 - Driving while denied; or

(xxx) B24 - Driving CMV while disqualified; or

(xxxi) B25 - Driving on revocation; or

(xxxii) B26 - Driving while suspended; or

(xxxiii) IID - Ignition interlock device violation - (result in 1 yr revocation); or

(xxxiv) M8A - Alcohol related reckless driving; or

(xxxv) U03 - Felony with a vehicle (joy riding) criminal class required; or

(xxxvi) U07 - Vehicular homicide/ regular or CMV; or

(xxxvii) U08 - Vehicular manslaughter; or

(xxxviii) USV - Shooting gun from a vehicle/Criminal class required (felony only); or

(xxxix) U09 - Negligent homicide while operating a CMV; or

(xl) UIV - Throwing incendiary device from/vehicle/criminal class required; or

(xli) U10 - Causing a fatality through the negligent operation of a CMV

(d) The unauthorized use, misuse, abuse or neglect of a state vehicle as validated by the driver's agency; or

(e) On the basis of citizen complaints validated by the agency, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Eligibility Board shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(5) Drivers declared ineligible to operate a state vehicle by the Driver Eligibility Board may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any appeal to the Executive Director of DAS or his/her designee must be made in writing within 30 days from the date the Driver Eligibility Board declared a state driver ineligible to operate a vehicle.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule will be subject to the Driver Eligibility standards in R27-7-3(3) for three years previous to the hire date.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct at least quarterly reviews of all accidents involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents involving drivers of vehicles being used in the course of conducting state business.

(3) After DFO has made an initial determination regarding the status of an accident the agency ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards published by the National Safety Council.

(4) Each agency ARC shall, within one (1) calendar month

following the last day of the quarter (March, June, September, December), provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable or non-preventable.

(5) If an agency ARC does not send the quarterly accident reviews as specified in R27-7-4(4), the status of the accident will be reviewed by the Driver Eligibility Board on behalf of the agency ARC. The Driver Eligibility Board's decision about the status any vehicle accident will be final. The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency ARC.

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable if any of the following factors are involved:

- (a) Driving too fast for conditions;
- (b) Failure to observe clearance;
- (c) Failure to yield;
- (d) Failure to properly lock the vehicle;
- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;
- (j) Reckless Driving as defined in Utah Code 41-6a-528;
- (k) Unsafe driving practices, including but not limited to:

the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

- (a) The state vehicle is struck while properly parked;
- (b) The state vehicle is vandalized while parked at an authorized location;
- (c) The state vehicle is an emergency vehicle, and
 - (i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and
 - (ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or
 - (iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

- (a) The authorized driver shall be required to attend a Division of Risk Management-approved driver safety program after being involved in the first preventable accident;
- (b) The driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course after being involved in a second preventable accident.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board (DEB) shall have at least 4 voting members. Members of the Board shall include a representative from the Division of Risk Management, the Division of Fleet Operations, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the

Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet at least quarterly.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board may impose an ineligible status from a single day up to three years. In no case shall the ineligible status to operate a state vehicle be less than the period imposed by the courts or the employing agency.

**KEY: accidents, incidents, tickets, ARC
April 20, 2009 63A-9-401(1)(d)(iii)
Notice of Continuation November 29, 2010**

R28. Administrative Services, Fleet Operations, Surplus Property.**R28-2. Surplus Firearms.****R28-2-1. Purpose and Authority.**

This rule sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 9, Part 8. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R28-2-2. Definitions.

(1) As used in this rule:

(a) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared surplus by a local subdivision.

(b) "USASP" means Utah State Agency for Surplus Property.

(c) "Handgun" means any pistol or revolver.

(d) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

(e) "Licensed firearms dealer" means a firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

R28-2-3. Procedures.

(1) All state owned firearms shall be disposed of under the general provisions of Rule R28-1.

(a) As an exception to the purchase priority listed in Section R28-1-5, the sale of firearms directly to the general public by the USASP is prohibited.

(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. All sales will be accomplished by either auction or sealed bid.

(c) Except as provided in this Subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.

(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.

(ii) USASP may authorize the sale of a handgun to a legally constituted law enforcement agency.

(iii) USASP may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:

(A) the individual's name;

(B) the serial number of the handgun to be sold; and

(C) the signature of an authorized agent of the owning agency.

(2) All firearms retained by the USASP shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.

(a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.

(3) All firearms retained by the USASP shall be in good working condition.

(a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

KEY: firearms**August 19, 2010****Notice of Continuation November 29, 2010****63A-9-801**

R81. Alcoholic Beverage Control, Administration.**R81-4B. Airport Lounges.****R81-4B-1. Licensing.**

Airport lounge liquor 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-4-202(3), 32A-4-203 and 32A-4-206(21).

R81-4B-2. Application.

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

R81-4B-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-205 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate 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.

R81-4B-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-202(1)(h) and (i) 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.

R81-4B-5. Airport Lounge Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an airport lounge liquor 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 serve 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.

R81-4B-6. Airport Lounge Liquor Licensee Operating Hours.

Liquor sales shall be in accordance with Section 32A-4-206(9). However, licensees may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4B-7. Sale and Purchase of Alcoholic Beverages.

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, as provided in Section 32A-4-206(22), shall be commenced upon the patron's first purchase and shall be maintained by the airport lounge during the course of the patron's stay at the airport lounge regardless of where the patron orders and consumes an alcoholic beverage. 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.

R81-4B-8. Liquor Storage.

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 of the airport lounge as approved by the department.

R81-4B-9. Alcoholic Product Flavoring.

Airport lounge 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 under the airport lounge license. 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 airport lounge employee under the age of 21 years may handle alcoholic product flavorings.

R81-4B-10. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list 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.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

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

R81-4B-11. Identification Badge.

Each employee of the licensee 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 licensee 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.

KEY: alcoholic beverages

August 1, 2003

Notice of Continuation November 3, 2010

32A-1-107

R81. Alcoholic Beverage Control, Administration.**R81-7. Single Event Permits.****R81-7-1. Application Guidelines.**

(1) A single event permit is issued to those who are conducting a convention, civic or community enterprise.

(a) "Conducting" means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(b) "Convention, civic or community enterprise" means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good.

(2) An application for a single event permit application shall be included on the agenda of the monthly commission meeting for consideration for issuance of a single event permit when the requirements of Section 32A-7 have been met, and a completed application has been received by the department.

(3) Pursuant to Section 32A-7-101, the commission may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(4) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(6) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(7) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(8) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with this Subsection (7), the commission may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) the type of entertainment, if any, at the event;
- (d) the location of the event;
- (e) the frequency of events held at the same location;
- (f) whether the location is government owned and operated; and

(g) the extent to which the event:

- (i) benefits the community;
- (ii) is held for charitable purposes; or
- (iii) is held for the profit of the entity or organization.

(9) Calendar year is defined as January 1 through December 31.

(10) The single event permit bond, as required by Section 32A-7-105, shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(11) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32A-7-105, an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(12) The commission may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32A-7. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a single event permit for such events, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the commission will issue a single event permit for an outdoor or a large-scale public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32A-1-107 and 32A-7-101 and -104.

(4) Policy.

(a) Before a single event permit will be issued by the commission to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's

identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, may in its discretion relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the commission may in its discretion require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the single event permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

**KEY: alcoholic beverages
November 17, 2010
Notice of Continuation August 24, 2006**

32A-1-107

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic

R81. Alcoholic Beverage Control, Administration.**R81-10A. On-Premise Beer Retailer Licenses.****R81-10A-1. Licensing.**

(1) On-premise beer retailer licenses are issued to persons as defined in Section 32A-1-105(44). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32A-10-202 (3), 32A-10-203, and 32A-10-206(17).

(2) An on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license or a limited restaurant license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license or a limited restaurant license subject to the following:

(a) The same on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32A-4-102, -103, and -105 or a limited restaurant license pursuant to the requirements of Sections 32A-4-303, -304, and -306.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) On-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32A-4-106 and R81-4A during the hours the restaurant liquor license is active.

(d) On-premise beer retailer licensees holding a separate limited restaurant license must operate in accordance with 32A-4-307 and R81-4C during the hours the limited restaurant license is active.

(e) Liquor storage areas on the restaurant or limited restaurant premises shall be deemed to remain on the floor plan of the restaurant or limited restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

R81-10A-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise beer retailer license when the requirements of Sections 32A-10-202, -203, and -205 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.

R81-10A-3. Bonds.

No part of any corporate or cash bond required by Section 32A-10-205 may be withdrawn during the time the license is in effect. If the on-premise beer licensee fails to maintain a valid corporate 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.

R81-10A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-10-202(1)(h) and (i) 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.

R81-10A-5. On-premise Beer Licensee Operating Hours.

Beer sales shall be in accordance with Section 32A-10-206(4). However, on-premise beer licensees may open their

beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-10A-6. Identification Badge.

Each employee of the licensee 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 licensee 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.

R81-10A-7. Draft Beer Sales/Minors on Premises.

A state on-premise beer license, restaurant liquor license, airport lounge license, limited restaurant license, on-premise banquet license or private club license authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32A-1-105(67). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

KEY: alcoholic beverages**September 1, 2010****Notice of Continuation November 3, 2010****32A-1-107**

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

R156-1-101. Title.

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

R156-1-102. Definitions.

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

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

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

(9) "Duplicate license" means a license reissued to replace

a license which has been lost, stolen, or mutilated.

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

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

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

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected

persons;

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

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

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

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

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

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

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

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

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

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

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

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

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

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

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

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

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

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

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

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

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

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

(b) responses to requests from an occupational or

professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

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

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

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

or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

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

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

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

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

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

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

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

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

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

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

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

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

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

(a) Commission.

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

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

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

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

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

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

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

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

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

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

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

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

within the department.

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

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(c) as required by Subsection 58-55-103(1)(b)(iv).

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

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

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

Diem and Expenses.

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

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

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

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

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

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

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

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

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

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

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

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

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

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

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

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

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

(8) the current criminal probationary or parole status of the applicant or licensee;

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

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

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

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

(13) psychological evaluations; or

(14) any other information the Division or the board

reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

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

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

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

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

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

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

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

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of

the appropriate fees, be licensed for a full renewal cycle the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

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

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

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

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

(b) Associate Professional Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed

two years past the date the minimum supervised experience requirement has been completed.

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

(g) Vocational Rehabilitation Counselor licenses will be renewed annually on March 31.

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

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

(b) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of a licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(3) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

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

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

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

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

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

(c) A licensee submitting a request has the burden of proof

and must document the reason for the request to the satisfaction of the Division.

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

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

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

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

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

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

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

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

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

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

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

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

renewed, or reinstated license.

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

(d) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

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

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

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

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

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

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

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

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

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

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

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

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

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

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

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

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

(b) provide information requested by the Division and

board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation of prior licensure in the State of Utah;

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

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

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

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

(2) pay the established license renewal fee and the

reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

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

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

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

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum

qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation,

Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state

or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

KEY: diversion programs, licensing, occupational licensing, supervision

November 8, 2010

Notice of Continuation March 1, 2007

58-1-106(1)(a)

58-1-308

58-1-501(4)

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

R156-3a-101. Title.

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

R156-3a-102. Definitions.

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

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

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

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

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

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

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

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

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

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

(d) is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

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

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

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

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

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

(a) current licensure in a recognized jurisdiction; or

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

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

(a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);

(b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and

(c) passing the ARE or passing a professional architecture examination that is equivalent to the ARE.

(12) "Responsible charge" as used in Subsections 58-3a-102(7), 58-3a-302(2)(d)(iv) and 58-3a-304(6) means direct control and management by a principal over the practice of architecture by an organization.

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

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-3a-502.

R156-3a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 3a.

R156-3a-104. Organization - Relationship to Rule R156-1.

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

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

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

(a) a State IDP Coordinator;

(b) an Education Coordinator; or

(c) an Intern IDP Coordinator.

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

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

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

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

(c) encourage firms to support IDP;

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

(e) report to the board as directed.

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

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

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

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

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

(b) a current NCARB Council Record;

(c)(i) if an applicant was previously licensed and practicing in Utah under a license that was granted under prior

statute or rule but allowed the license to lapse for more than two years, the applicant may reinstate the license by demonstrating that their combined education, supervised experience and licensed practice demonstrate that the applicant's training is equivalent to an NAAB accredited educational program;

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

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

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

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

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

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

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

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

(a) a current NCARB Council Record; or

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

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

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

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

(1) During each two year period ending on March 31 of each even numbered year, a licensed architect shall be required to complete not less than 16 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

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

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

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

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or

construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

(6) If a licensee exceeds the 16 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 8 hours of qualified continuing professional education into the next two year period.

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

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

(9) Any applicant for reinstatement shall be required to complete 16 hours of continuing professional education

complying with this rule within two years prior to the date of application for reinstatement of licensure.

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

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

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

R156-3a-306. Inactive Status.

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

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

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

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed 16 hours of continuing education.

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

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July 2007 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

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

R156-3a-503. Administrative Penalties.

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

TABLE
FINE SCHEDULE

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

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-3a-502(1)(i).

(3) If multiple offenses are cited on the same citation, the

fine shall be determined by evaluating the most serious offense.

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

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

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

In accordance with Section 58-3a-601, all final plans and specifications of buildings erected in this state, prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(1) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(2) Each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Architect".

(3) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(4) Each original set of final plans and specifications, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(5) A seal may be a wet stamp, embossed, or electronically produced.

(6) Copies of the original set of plans and specifications which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

KEY: architects, licensing

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58-3a-101

58-3a-303.5

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.

R156-9-101. Short title.

This rule shall be known as the "Funeral Service Licensing Act Rule".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsections 58-9-102(12)(a)(i) and (ii), and (b)(i) and (ii).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(1), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-501.

R156-9-103. 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 9.

R156-9-104. 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.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) An applicant for licensure as a funeral service intern shall answer correctly all the law and rule questions in the open book examination contained in the application.

(3) An applicant for licensure as a funeral service director, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:

- (a) no earlier than 30 days following any failure;
- (b) no more than three failures within a six month period;

and

(c) no earlier than six months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

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

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

R156-9-304. Continuing Professional Education - Funeral

Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:

(1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(3) The standards for qualified continuing professional education are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All mortuaries shall be kept and maintained in a clean and sanitary condition and all embalming tables, sinks, receptacles, instruments and other appliances used in embalming and cremation of dead human bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the

State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, intern, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalmings, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the Board and Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-403. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body to another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or this Funeral Service Licensing Act Rule;

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by

money placed in trust to insurance except as provided by this rule;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the Division on forms provided by the Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a funeral service establishment or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as

"as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model.

(1) To assist applicants for a funeral service establishment license, the Division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-9-701.

(2) In accordance with the provisions of Subsection 58-9-302(3)(e), a funeral service establishment must submit to the Division a copy of the preneed contract form it intends to market for initial licensure and then ensure that if any amendments are made to the preneed section in the future, the amendments shall meet the requirements set forth in Section 58-9-701 before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(4) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007 shall continue to contain a clause indicating approval by the Division.

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts: "Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the funeral service establishment have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the

proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-614. Funeral Service Establishment Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-615. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

(1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-616. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by

insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-617. Maximum Revocation Fee.

(1) If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-618. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

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R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion, for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.

(11) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(12) "Galvanic current" means a constant low-voltage direct current.

(13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.

(15) "Hydrotherapy", as used in Subsection 58-11a-102(31)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(18) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(a)(i)(C), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(19) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(20) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

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

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(16) through (19), until the application is approved and a license issued.

R156-11a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-11a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed; and

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Esthetics Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Any equivalent theory, practical or instructor

examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection (1).

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(17):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

(a) Josef Silny and Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(18), credit hours toward graduation may be accepted as follows:

(1) A licensed school may accept credit hours toward the curriculum set forth in Section R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-704 and R156-11a-705 from a licensee under Title 58, Chapter 11a, based upon the licensee's schooling, apprenticeship, or experience.

(2) The credit hours accepted toward graduation shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), and 58-11a-302(14)(d)(i) for that professional license in Utah.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700

through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(13) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(14) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(15) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$200

Second Offense: \$300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$400

Second Offense: \$800

(3)(a) Using as a nail technician a solution composed of at least 10% methyl methacrylate on a client in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(b) Possessing as a nail technician a solution composed of at least 10% methyl methacrylate in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

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

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

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) submit an application for candidate status for accreditation to an accrediting commission within one month of the date when the school was licensed by the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school;

(ii) provide evidence received from the accrediting commission to the Division of achieving candidate status within 12 months of the date the school was licensed;

(iii) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1;

(iv) comply with all applicable accreditation standards during the pendency of its application for accreditation status; and

(v) have 24 months following the date of achieving candidate status to be approved for accreditation.

(b)(i) If the entity is a newly licensed school, but the facility is operated on essentially the same premises with essentially the same staff then the newly licensed school shall meet the accreditation deadlines that were applicable to the predecessor licensed school.

(ii) The determination of whether a newly licensed school entity has succeeded a predecessor shall be made by the Division.

(4) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iii), (13)(c)(iii) and (16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iv), (13)(c)(iii), and (16)(c)(iii), when a barbershop, professional salon or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon or spa shall maintain separate operations from the school.

(2) If the barbershop, salon or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon or spa shall also use separate public information releases, advertisements and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the Division within 15 days by registered or certified mail and shall name a trustee who is responsible for maintaining the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation

of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Hours obtained while enrolled in a barber, cosmetology/barber, esthetics, master esthetics, or nail technology apprenticeship shall not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and catalogue or handbook, or both, for each student and shall provide a copy of the contract and catalogue or handbook, or both to the Division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology schools shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), (5)(e) and (f), (8)(e) and (f), (12)(e) and (f), and (15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(9), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics or nail technology in a licensed barber school, a licensed cosmetology/barber school or a licensed nail technology school or in an approved barber, cosmetology/barber, basic esthetics or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection (1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and

qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b) and (31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b); and
- (d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

- (a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and
 - (b) salicylic acid of 15% or less.
- (4) Chemical exfoliation for a master esthetician includes:
- (a) acids allowed for a basic esthetician;
 - (b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (i) courses of instruction;
- (ii) specialized training;
- (iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(31)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus shall be:

- (1) No mechanical or electrical apparatus that is

considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:

- (a) advanced pedicures;
- (b) advanced extraction of impurities from the skin; and
- (c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(4) To be approved, a microdermabrasion machine must:

- (a) be specifically labeled for cosmetic or esthetic purposes;
- (b) be a closed-loop vacuum system that uses a tissue retention device; and
- (c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(b) and (31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

- (a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
- (b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of barbering;
 - (b) an overview of the barber curriculum;
- (2) personal, client and shop safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
 - (c) health risks to the barber;
- (3) business and shop management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations;
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies;
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the hair and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination;
 - (e) infection control;
 - (7) implements, tools and equipment for barbering;
 - (8) first aid;

- (9) anatomy;
- (10) science of barbering;
- (11) chemistry for barbering;
- (12) analysis of the hair and scalp;
- (13) properties of the hair, skin, and scalp;
- (14) basic hairstyling and hair cutting including:
 - (a) draping;
 - (b) clipper variations;
 - (c) scissor cutting; and
 - (d) wet and thermal styling;
- (15) shaving and razor cutting;
- (16) mustache and beard design;
- (17) elective topics; and
- (18) the Utah Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) the history of electrology; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the electrologist;
- (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice and liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of hair and skin;
- (7) implements, tools, and equipment for electrology;
- (8) first aid;
- (9) anatomy;
- (10) science of electrology;
- (11) analysis of the skin;
- (12) physiology of hair and skin;
- (13) medical definitions including:
 - (a) dermatology;
 - (b) endocrinology;
 - (c) angiology; and
 - (d) neurology;
- (14) evaluating the characteristics of skin;
- (15) evaluating the characteristics of hair;
- (16) medications affecting hair growth including:
 - (a) over-the-counter preparations;
 - (b) anesthetics; and
 - (c) prescription medications;
- (17) contraindications;
- (18) disease and blood-borne pathogens control including:
 - (a) pathogenic bacteria and non-bacterial causes; and
 - (b) American Electrology Association (AEA) infection control standards;
- (19) principles of electricity and equipment including:
 - (a) types of electrical currents, their measurements and classifications;
 - (b) Food and Drug Administration (FDA) approved needle type epilation equipment;
 - (c) FDA approved hair removal devices; and
 - (d) epilator operation and care;

- (20) modalities for need type electrolysis including:
 - (a) needle/probe types, features, and selection;
 - (b) insertions, considerations, and accuracy;
 - (c) galvanic multi needle technique;
 - (d) thermolysis manual and flash technique;
 - (e) blend and progressive epilation technique; and
 - (f) one and two handed techniques;
- (21) clinical procedures including:
 - (a) consultation;
 - (b) health/medical history;
 - (c) pre and post treatment skin care;
 - (d) normal healing skin effects;
 - (e) tissue injury and complications;
 - (f) treating ingrown hairs;
 - (g) face and body treatment;
 - (h) cosmetic electrology; and
 - (i) positioning and draping;
- (22) elective topics; and
- (23) Utah Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetic Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the basic esthetician;
- (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising.
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
- (7) implements, tools, and equipment for basic esthetics including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of basic esthetics;
 - (11) analysis of the skin;
 - (12) physiology of the skin;
 - (13) facials, manual and mechanical;
 - (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
 - (15) chemistry for basic esthetics;
 - (16) temporary removal of superfluous hair by waxing;
 - (17) treatment of the skin;

- (18) packs and masks;
- (19) Aroma therapy;
- (20) application of makeup including:
 - (a) application of artificial eyelashes;
 - (b) arching of the eyebrows; and
 - (c) tinting of the eyelashes and eyebrows;
- (21) medical devices;
- (22) cardio pulmonary resuscitation (CPR);
- (23) basic facials;
- (24) chemistry of cosmetics;
- (25) skin treatments, manual and mechanical;
- (26) massage of the face and neck;
- (27) natural nail manicures and pedicures;
- (28) elective topics; and
- (29) Utah Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics and master esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the master esthetician;
- (3) business and salon management consisting of:
 - (a) developing clients;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) advertising; and
 - (f) public relations;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) the human immune system;
- (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) contamination; and
 - (e) infection controls;
- (7) implements, tools and equipment for master esthetics;
- (8) first aid;
- (9) anatomy;
- (10) science of master esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;
- (13) advanced facials, manual and mechanical;
- (14) chemistry for master esthetics;
- (15) advanced chemical exfoliation, including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) reactions;
- (16) temporary removal of superfluous hair by waxing and advanced waxing;
- (17) advanced pedicures;
- (18) advanced Aroma therapy;
- (19) the aging process and its damage to the skin;
- (20) medical devices;
- (21) cardio pulmonary resuscitation (CPR) training;
- (22) hydrotherapy;

- (23) advanced mechanical and electrical devices including instruction in using:
 - (a) sanding and microdermabrasion techniques;
 - (b) galvanic or high-frequency current for treatment of the skin;
 - (c) devices equipped with a brush to cleanse the skin;
 - (d) devices that apply a mixture of steam and ozone to the skin;
 - (e) devices that spray water and other liquids on the skin; and
 - (f) any other mechanical devices, esthetic preparations or procedures approved by the division in collaboration with the board for the care and treatment of the skin;

(24) elective topics;

(25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:

- (a) 40 hours of training in anatomy and physiology of the lymphatic system;
- (b) 70 applications of one hour each in manual lymphatic massage of the full body; and
- (c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
- (26) Utah Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of nail technology; and
 - (b) an overview of the curriculum;
- (2) personal, client and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the nail technician;
- (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of the nails and skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
- (7) implements, tools and equipment for nail technology;
- (8) first aid;
- (9) anatomy;
- (10) science for nail technology;
- (11) theory of basic manicuring including hand and arm massage;
- (12) physiology of the skin and nails;
- (13) chemistry for nail technology;
- (14) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;

- (c) gel nails;
- (d) sculptured and other acrylic nails; and
- (e) nail art;
- (15) pedicures and massaging the lower leg and foot;
- (16) elective topics; and
- (17) Utah Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction in all of the following subject areas:

- (1) introduction consisting of:
 - (a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
 - (b) overview of the curriculum;
- (2) personal, client and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
 - (c) health risks to the cosmetologist/barber;
- (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of skin, nails, hair, and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
- (7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology, including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of cosmetology/barbering, basic esthetics and nail technology;
 - (11) analysis of the skin, hair and scalp;
 - (12) physiology of the human body including skin and nails;
 - (13) electricity and light therapy;
 - (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
 - (15) chemistry for cosmetology/barbering, basic esthetics and nail technology;
 - (16) temporary removal of superfluous hair including by waxing:
 - (17) properties of the hair, skin and scalp;
 - (18) basic hairstyling including:
 - (a) wet and thermal styling;
 - (b) permanent waving;
 - (c) hair coloring;
 - (d) chemical hair relaxing; and
 - (e) thermal hair straightening;
 - (19) haircuts including:
 - (a) draping;
 - (b) clipper variations;

- (c) scissor cutting;
- (d) shaving; and
- (e) wigs and artificial hair;
- (20) razor cutting for men;
- (21) mustache and beard design;
- (22) basic esthetics including:
 - (a) treatment of the skin, manual and mechanical;
 - (b) packs and masks;
 - (c) aroma therapy;
 - (d) chemistry of cosmetics;
 - (e) application of makeup including:
 - (i) application of artificial eyelashes;
 - (ii) arching of the eyebrows;
 - (iii) tinting of the eyelashes and eyebrows;
 - (f) massage of the face and neck; and
 - (g) natural manicures and pedicures;
- (23) medical devices;
- (24) cardio pulmonary resuscitation (CPR);
- (25) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;
 - (c) gel nails;
 - (d) sculptured and other acrylic nails; and
 - (e) nail art;
- (26) pedicures and massaging of the lower leg and foot;
- (27) elective topics; and
- (28) Utah Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Instructor Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

- (1) motivation and the learning process;
- (2) teacher preparation;
- (3) teaching methods;
- (4) classroom management;
- (5) testing;
- (6) instructional evaluation;
- (7) laws, rules and regulations; and
- (8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

- (1) The instructor shall have only one apprentice at a time.
- (2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
- (3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.
- (4) A complete set of barber texts shall be available to the apprentice.
- (5) An apprentice may be compensated for services performed.
- (6) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.
- (7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.
- (8) An apprentice shall not perform work on the public

until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.

R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

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

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is hazardous materials as defined in Section 307 of the 2009 International Building Code and Section 2703 of the 2009 International Fire Code.

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

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

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

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

(d) is work that affects not greater than 49 occupant as determined in Section 1004 of the 2009 International Building Code;

(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

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

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the

construction and installation of highway, utility, or pedestrian bridges.

(9) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) an associate or higher education degree in land surveying as set forth in Subsection R156-22-302b(2)(c) or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Surveying Examination (PS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Surveying Examination.

(10) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(11) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology (ABET, Inc.).

(12) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(13) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. 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 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to an EAC/ABET accredited program by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES). Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or higher education degree and completion of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

- (i) boundary law;
- (ii) writing legal descriptions;
- (iii) photogrammetry;
- (iv) public land survey system;
- (v) studies in land records or land record systems;
- (vi) surveying field techniques; and

(b) the remainder of the 30 semester hours or 42 quarter hours may be made up of successful completion of courses from the following content areas:

- (i) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;
- (ii) control systems;
- (iii) drafting, not to exceed six semester hours or eight quarter hours;
- (iv) geodesy;
- (v) geographic information systems;
- (vi) global positioning systems;
- (vii) land development; and
- (viii) survey instrumentation;

(c) the degree and courses shall be completed in an education institution accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on College and Universities;

- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to

supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the Division in collaboration with the board in accordance with the following:

(A) The qualifying experience shall be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of

engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) The qualifying experience shall be obtained after meeting the education requirements.

(c) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(d) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall have until December 31, 2009 to apply for licensure by documenting eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(4)(a)(i)(A) and four of the eight years required in R156-22-302c(4)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;
- (E) traverse;
- (F) staking procedures;
- (G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

- (A) drafting (includes computer plots and layout);
- (B) reduction of notes and field survey data;
- (C) research of public records;
- (D) preparation and evaluation of legal descriptions; and
- (E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(4)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(1) after having successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the

following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural Examination, and prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Surveying (FS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Surveying (PS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the 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.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant must have successfully completed the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply

with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES(FS) Examination or the NCEES (PS) Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES(FS) Examination or the(PS) Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

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

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

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

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

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

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

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

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

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

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

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

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 22:

TABLE
FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	\$ 800.00	\$1,600.00
58-1-501(1)(b)	\$1,000.00	\$2,000.00
58-1-501(1)(c)	\$1,000.00	\$2,000.00
58-1-501(1)(d)	\$1,000.00	\$2,000.00
58-22-501(1)	\$ 800.00	\$1,600.00
58-22-501(2)	\$ 800.00	\$1,600.00
58-22-501(3)	\$ 800.00	\$1,600.00
58-22-501(4)	\$ 800.00	\$1,600.00
58-22-501(5)	\$ 800.00	\$1,600.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

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

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

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

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

November 29, 2010 **58-22-101**
 Notice of Continuation November 15, 2007 **58-1-106(1)(a)**
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-39a. Alternative Dispute Resolution Providers Certification Act Rule.

R156-39a-101. Title.

This rule is known as the "Alternative Dispute Resolution Providers Certification Act Rule".

R156-39a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 39a, as used in Title 58, Chapters 1 and 39a or this rule:

(1) "Alternative dispute resolution provider" or "ADRP" means one who holds himself out as an arbitrator, negotiator, mediator, neutral fact finding expert, qualified neutral person, special master, conciliator, or any other title intended to cause a reasonable person to believe he is engaged in the alternative dispute resolution process.

(2) "Arbitration" means a forum in which one or more qualified neutral individuals, knowledgeable in the subject matter of the dispute, and educated, trained or experienced in the dispute resolution process, hears the positions, facts, and evidence presented by conflicting parties to a dispute, defines the issues, and makes a binding or non-binding decision regarding the matter in dispute.

(3) "Certified alternative dispute resolution provider" means an individual who is certified under Title 58, Chapter 39a as an alternative dispute resolution provider and designated as an arbitrator, mediator, or negotiator.

(4) "License" as used in Title 58, Chapter 39a means certification.

(5) "Negotiation" means a process in which there is an attempt to resolve a dispute or reach agreement in a matter employing the services of one or more negotiators who represent the interests of a party to a dispute or matter not agreed upon.

(6) "Mediation" is defined in Subsection 78B-6-202(8).

(7) "Neutral expert fact-finding" means a process in which the issue or issues in dispute are of such a technical or complex nature, and the assessment of the issues by the disputing parties and their respective experts is so divergent, that the services of a neutral expert are retained by the parties to the dispute to hear the issues and advise the parties to the dispute of their neutral and expert opinion for the purpose of improving the opportunity for settlement between the parties.

(8) "Qualified neutral person" means a person who is determined by the parties to a dispute as competent to act as an alternative dispute resolution provider.

(9) "Summary jury trial" is defined in Subsection 78B-6-202(9).

(10) "Unprofessional conduct" is defined in Subsection 58-1-501(2).

(11) "Use of special masters and related processes in civil disputes" means the use of individuals to perform duties assigned by a court or administrative agency in the resolution of disputes in accordance with the direction and authority of the court of administrative agency.

R156-39a-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 39a.

R156-39a-104. Organization - Relationship to Rule 156-1.

The organization of this rule and its relationship to Rule 156-1 is as described in Section R156-1-107.

R156-39a-301. Certificate Classifications.

(1) In accordance with Subsection 58-39a-4(1), the Division shall issue certificates in the following classifications:

(a) Certified Alternative Dispute Resolution Provider -

Arbitrator;

(b) Certified Alternative Dispute Resolution Provider - Mediator; and

(c) Certified Alternative Dispute Resolution Provider - Negotiator.

(2) Each classification shall be considered a separate certificate and shall be obtained by filing a separate application for each and paying the related fee.

R156-39a-302a. Qualifications for Certification - Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(c) and 58-1-301(3), the education and training requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:

(1) An applicant to obtain certification as an arbitrator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in arbitration which program of education may include the following subject material:

(i) arbitration language including the phrases and clauses necessary to initiate the procedure;

(ii) implementing the procedures required in adjudicating a proper award including conduct of proceedings, preparation, evidence, timeliness, records and documentation;

(iii) analyzing conflicts to narrow issues in dispute;

(iv) principles of dispute resolution;

(v) effective listening;

(vi) sensitivity and awareness of cross-cultural issues;

(vii) maintaining neutrality;

(viii) appropriate decision making processes;

(ix) control of the process and effective adjudication of the issues in dispute;

(x) historical perspective of arbitration;

(xi) critical thinking and reasoning skills;

(xii) various types of arbitration;

(xiii) effective writing; and

(b) verification that the applicant has satisfactorily served as an arbitrator in three separate cases or ten clock hours, whichever is greater.

(2) An applicant to obtain certification as a mediator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in mediation which may include the following subject material:

(i) stages and value of conflict in empowering change;

(ii) principles of dispute resolution;

(iii) effective listening;

(iv) empathy and validation;

(v) sensitivity and awareness of cross-cultural issues;

(vi) maintaining neutrality;

(vii) identifying and reframing issues;

(viii) establishing trust and respect;

(ix) techniques for achieving agreement and settlement;

(x) creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;

(xi) shaping and writing agreements;

(xii) ethical standards for conduct of mediations; and

(b) verification that the applicant has satisfactorily served as a mediator in three separate cases or ten clock hours, whichever is greater.

(3) An applicant to obtain certification as a negotiator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in negotiation which may include the following subject material:

(i) stages and value of conflict in empowering change;

(ii) principles of negotiation;

(iii) effective listening;

(iv) empathy and validation;

- (v) sensitivity and awareness of cross-cultural issues;
- (vi) maintaining neutrality;
- (vii) identifying and reframing issues;
- (viii) establishing trust and respect;
- (ix) shaping and writing agreements;
- (x) ethical standards for conduct of negotiations; and
- (b) verification that the applicant has satisfactorily served as a negotiator in three separate cases or ten clock hours, whichever is greater.

R156-39a-302b. Qualifications for Certification - Experience Requirements.

In accordance with Subsections 58-1-203(1)(c) and 58-1-301(3), the experience requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:

- (1) An applicant may be certified as an ADRP - Arbitrator without the necessity of completing the education and training requirements provided in R156-39a-302a(1) by providing evidence that the applicant has served as an arbitrator in cases involving not less than 32 clock hours.
- (2) An applicant may be certified as an ADRP - Mediator without the necessity of completing the education and training requirements provided in R156-39a-302a(2) by providing evidence that the applicant has served as a mediator in cases involving not less than 32 clock hours.
- (3) An applicant may be certified as an ADRP - Negotiator without the necessity of completing the education and training requirements provided in R156-39a-302a(3) by providing evidence that the applicant has served as a negotiator in cases involving not less than 32 clock hours.

R156-39a-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 certificates under Title 58, Chapter 39a, is established by rule in Section R156-1-308a.

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

KEY: licensing, arbitration, mediation, alternative dispute resolution

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Notice of Continuation October 13, 2008 58-1-202(1)(a)
58-39a-1

**R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rule.
R156-55b-101. Title.**

This rule is known as the "Electricians Licensing Rule".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means that the apprentice and the supervising electrician may or may not be within sight of one another, but be physically present on the same project or jobsite.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55b-104. Organization - Relationship to Rule R156-1.

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

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication,

alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations which are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Upon completing the requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b, the applicant shall obtain approval from the Division permitting the applicant to take the examination.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant may not retake any part of the examination more than two times and shall wait at least 25 days between retakes.

(c) If an applicant does not pass any failed part of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, the applicant's application shall be denied.

(5)(a) On or after December 31, 2010, if an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter the applicant shall retake any previously passed part of the examination.

(b) Prior to December 31, 2010, if an applicant passed any part of the examination but did not pass the entire examination, the applicant may use any previously passed part of the examination to pass the entire examination until December 31, 2011. Thereafter the applicant shall retake the entire examination to support any subsequent application for licensure.

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

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

R156-55b-304. Continuing Education.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.

(3) "Professional continuing education" is defined as education covering:

(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls, electrical tool usage; and

(c) supervision skills related to the electrical trade.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the electrical trade.

(c) Content. The content of the course shall be relevant to the practice of the electrical trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through

home study courses provided the course verifies registration and participation in the course by means of a passing a test which demonstrates that the participant has learned the material presented. Test questions shall be randomized for each internet participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit;
- (vi) the attendee's name;
- (vii) the attendee's license number; and
- (viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(11) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(12) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(13) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the Division to insure that the work installed by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship. In the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

(4) For the purposes of Subsections 58-55-102(31), 58-55-501(12) and 58-55-302(3)(j), one of the following shall apply:

(a) the supervisor and apprentice employees are employees of the same electrical contractor;

(b) the supervisor and apprentice employees providing work or supervision of work for another electrical contractor are considered as employees of the electrical contractor on the project; or

(c) the employees of a licensed professional organization who provide workers under a contract with an electrical contractor are considered as employees of the electrical contractor with regard to the work performed on the project.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure of a licensee to carry a copy of a current license at all times when performing electrical work;

(2) failure of an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(3) failure of a licensee to provide proof of completed continuing education within 30 days of the Division's request.

KEY: occupational licensing, licensing, contractors, electricians

November 22, 2010

Notice of Continuation November 8, 2006

58-1-106(1)(a)

58-1-202(1)(a)

58-55-308(1)

**R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Rule.**

R156-55c-101. Title.

This rule is known as the "Plumber Licensing Rule".

R156-55c-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) "Board" means the Plumbers Licensing Board.

(2) "Direct supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

(3) "Plumber" means apprentice plumber, journeyman plumber, residential journeyman plumber, master plumber and residential master plumber.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-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.

R156-55c-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.

R156-55c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-55-302 are defined, clarified, or established as follows:

(1) an applicant for licensure shall submit an application for license only after having met all requirements for licensure set forth in Section 58-55-302 and this rule; and

(2) the application must be accompanied by all documents or other evidence required demonstrating the applicant is qualified for licensure.

R156-55c-302b. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and

instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	1,200
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100
J. Hydronics piping and equipment installation	300
K. Fire suppression system installation	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600

C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	800
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400
G. Service and maintenance of gas controls and equipment	100
H. Welding, soldering and brazing as it applies to the trade	100
I. Hydronics piping and equipment installation	300
J. Fire suppression system installation	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination which shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302a, R156-55c-302b and R156-55c-302c.

(3)(a) If an applicant fails one or more sections of the examination, the applicant shall retake any section of the examination failed.

(b) An applicant may not retake any section of the examination more than two times and shall wait at least 25 days between retakes.

(c) If an applicant does not pass any failed section of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, the

applicant's application shall be denied.

(4)(a) On or after December 31, 2010, if an applicant passes any section of the examination but does not pass the entire examination, the passing score on any section of the examination shall be valid for one year from the date the section of the examination was passed. Thereafter the applicant shall retake any previously passed section of the examination that is no longer valid to support any subsequent application for licensure.

(b) Prior to December 31, 2010, if an applicant passed any section of the examination but did not pass the entire examination, the applicant may use any previously passed section of the examination to pass the entire examination until December 31, 2011. Thereafter the applicant shall retake the entire examination.

R156-55c-302d. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the direct supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

- (vi) construction management;
- (vii) engineering;
- (viii) environmental technology;
- (ix) finance;
- (x) human resources; or
- (xi) marketing.

R156-55c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a(1).

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

R156-55c-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering:

(a) International Building, Mechanical, Plumbing Codes and Utah building code amendments as adopted or proposed for adoption;

(b) the Americans with Disability Act;

(c) medical gas, National Fire Protection Association 13D and 54; and

(d) hydronics and waste water treatment.

(3) "Professional continuing education" is defined as education covering:

(a) energy conservation, management training, new technology, plan reading; and

(b) lien laws and Utah construction registry.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing trade and consistent with the laws

and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through home study courses provided the course verifies registration and participation in the course by means of a passing a test which demonstrates that the participant has learned the material presented. Test questions shall be randomized for each internet participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(11) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(12) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(13) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division

for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55c-304. Licensure by Endorsement.

In accordance with the provisions of Section 58-1-302, the Division may issue an individual a license as an apprentice plumber, journeyman plumber, residential journeyman plumber, master plumber or residential master plumber by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber, residential journeyman plumber, master plumber or residential master plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber on a commercial or industrial project when not under the immediate supervision of a journeyman plumber;

(2) engaging in the plumbing trade as an apprentice plumber on a residential project when not under the immediate supervision of a residential journeyman or journeyman plumber, except as provided in Subsection 58-55-302(3)(e)(ii);

(3) engaging in the plumbing trade as an apprentice plumber except in accordance with instructions of the supervising plumber;

(4) acting as a journeyman plumber or residential journeyman plumber while supervising more than two apprentice plumbers;

(5) failure as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer; and

(6) failure as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor.

R156-55c-601. Proof of Licensure.

Each apprentice, residential journeyman, journeyman plumber, residential master plumber and master plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the Division or any law enforcement officer upon request.

KEY: occupational licensing, licensing, plumbers, plumbing
November 22, 2010 58-1-106(1)(a)
Notice of Continuation November 8, 2006 58-1-202(1)(a)
 58-55-101

R156. Commerce, Occupational and Professional Licensing.**R156-55d. Burglar Alarm Licensing Rule.****R156-55d-101. Title.**

This rule is known as the "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) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

(2) "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.

(3) "Employee", as used in Subsections 58-55-102(17) 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.

(4) "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.

(5) "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 America 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 as an employee and under the immediate supervision of the applicant's employer;

(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)(x)(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)(vii) 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(1).

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

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 22, 2010 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.
R156-55e. Elevator Mechanics Licensing Rule.
R156-55e-101. Title.

This rule is known as the "Elevator Mechanics Licensing Rule."

R156-55e-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) "Employee", as used in Subsection 58-55-102(17) and this rule, 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.

(2) "Immediate supervision", as used in Subsection 58-55-102(16) and this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with the applicable standards.

(3) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55e-502.

R156-55e-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.

R156-55e-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.

R156-55e-302a. Qualifications for Licensure - Experience and Education Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements in Subsections 58-55-302(1)(e)(v) and 58-55-302(3)(m)(i)(A) and (C) are further clarified and established below.

(1)(a) The required three years of experience and education shall mean 6,000 hours of training.

(b) An applicant may earn no more than 2,000 hours of training in any 12-month period.

(c) The required training shall be within the past ten years from the date of application for licensure.

(d) The required training shall be obtained as an employee working:

(i) under the immediate supervision of a licensed elevator contractor where licensure is required; or

(ii) under an employer meeting similar qualifications as those of a licensed elevator contractor where licensure is not required.

(e) No credit shall be given for training obtained illegally.

(2) The requirements of Subsection (1) may be met by completing a program resulting in the award of a certification from:

(a) the Canadian Elevator Industry Education Program;

(b) the National Association of Elevator Contractors Certified Elevator Technician Education Program;

(c) the National Elevator Industry Education Program; or

(d) any other program that meets the requirements of Subsection 58-55-302(3)(m)(i)(C) as determined by the Commission with the concurrence of the Division Director.

R156-55e-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(3)(m)(i)(B), an applicant for licensure as an elevator mechanical shall:

(a) pass the Utah Elevator Examination with a score of not

less than 75%; or

(b) complete one of the following certification programs:

(i) the Canadian Elevator Industry Education Program;

(ii) the National Association of Elevator Contractors Certified Elevator Technician Education Program;

(iii) the National Elevator Industry Education Program; or

(iv) any other program that meets the requirements of Subsection 58-55-302(3)(m)(i)(C) as determined by the Commission with the concurrence of the Division Director.

(2) An applicant for licensure who fails the Utah Elevator Examination may retake the failed examination as follows:

(a) no earlier than 30 days following any failure, up to three failures; and

(b) no earlier than six months following any failure thereafter.

R156-55e-302c. Qualifications for Licensure - Temporary License Requirements.

(1) The Division may issue a temporary license when:

(a) a licensed elevator contractor notifies the Division that the contractor cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, which is confirmed by the Division;

(b) the contractor requests the Division to issue a temporary elevator mechanic license to an individual;

(c) the individual submits an application for temporary licensure accompanied by the appropriate application fee; and

(d) the contractor certifies that the individual has completed 3,550 hours of training that meets the requirements of Section R156-55e-302a.

(2) The expiration date of the temporary license shall be the expected duration of the shortage of licensed elevator mechanics, but shall not exceed 90 days.

(3) A temporary license may be renewed if a shortage of elevator mechanics is ongoing on the expiration date of the license, but shall not exceed 90 days.

R156-55e-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 Subsection R156-1-308a(1).

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

R156-55e-303a. Continuing Education - Standards.

(1) Required Hours. Pursuant to Section 58-55-303, each licensee shall complete eight hours of continuing education during each two year license term.

(2) "Approved continuing education" is defined as:

(a) elevator codes, construction, government regulations, maintenance, and new technology; and

(b) OSHA 10 or OSHA 30 safety training, or other safety training as it pertains to the elevator trade.

(3) Non-acceptable course subject matter shall include the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(4) The Division may:

(a) waive the continuing education requirements for a licensee who is an instructor of an approved apprenticeship

program; and

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(5) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the elevator trade.

(c) Content. The content of the course shall be relevant to the practice of the elevator trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through home study courses provided the course verifies registration and participation in the course by means of passing a test which demonstrates that the participant has learned the material presented. Test questions shall be random for each internet participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(6) On a random basis, the Division may assign monitors at no charge to attend a course for the purposes of evaluating the course and the instructor.

(7) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (10). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(8) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(9) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the

continuing education requirement for that renewal cycle.

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55e-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to carry a copy of a current license at all times when performing work as an elevator mechanic; and

(2) failing to display a copy of a current license upon request to a representative of the Division or a representative of a governmental entity enforcing criminal, building, or safety codes.

R156-55e-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.

KEY: elevator mechanics, licensing

November 8, 2010

58-1-106(1)(a)

58-1-202(1)(a)

58-55-101

58-55-308(1)(a)

58-55-302(3)(m)

R162. Commerce, Real Estate.**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.****R162-2c-101. Title.**

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) "Branch lending manager" means the person assigned to oversee a branch office. As of November 1, 2010:

(a) a branch office registering in the nationwide database or renewing its registration shall identify an ALM to serve as the branch lending manager; and

(b) the individual identified by the branch office must be qualified for licensure as a PLM.

(3) The acronym "BLM" stands for branch lending manager.

(4) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(5) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(6) "Control person" means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:

(a) a manager;

(b) a managing partner;

(c) a director;

(d) an executive officer; or

(e) an individual who performs a function similar to an individual listed in this Subsection (6).

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator, principal lending manager, branch lending manager, or associate lending manager.

(8) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(9) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(10) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(11) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(12) "Other trade name" means any assumed business name under which an entity does business.

(13) The acronym "PLM" stands for principal lending manager.

(14) "Qualifying individual" means the PLM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(15) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(16) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(17) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(18) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) obtain a unique identifier through the nationwide database;

(iv) successfully complete, within the 12-month period prior to the date of application, 60 hours of pre-licensing education as follows:

(A) 40 hours of Utah-specific education; and

(B) 20 hours as approved by the nationwide database according to the nationwide database outline for national course curriculum;

(v) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(vi) request licensure as a mortgage loan originator through the nationwide database;

(vii) authorize a criminal background check and submit fingerprints through the nationwide database;

(viii) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form; and

(ix) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii)(A) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific

mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(v) request licensure as a mortgage loan originator through the nationwide database;

(vi) authorize a criminal background check through the nationwide database; and

(vii) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Principal lending manager. To obtain a Utah license to practice as a PLM, an individual shall:

(a) qualify as a mortgage loan originator through the nationwide database;

(b) evidence good moral character pursuant to R162-2c-202(1);

(c) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(d) obtain approval from the division to take the Utah-specific PLM prelicensing education by evidencing that the applicant has, within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator;

(e) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;

(f)(i) if currently licensed in Utah as a mortgage loan originator, take and pass a principal lending manager examination as approved by the commission; or

(ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:

(A) the Utah-specific state examination component; and

(B) a principal lending manager examination as approved by the commission;

(g) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(h) register in the nationwide database by selecting the "principal lending manager" license type and completing the associated MU4 form; and

(i) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Associate lending manager. To obtain a Utah license to practice as an ALM, an individual shall:

(a) comply with this Subsection (2)(a) through (g);

(b) register in the nationwide database by selecting the "associate lending manager" license type and completing the associated MU4 form; and

(c) pay all fees through the nationwide database as required by the division and by the nationwide database.

(4) Mortgage entity. To obtain a Utah license to operate as a mortgage entity, a person shall:

(a) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(b) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(c) register any other trade name with the Division of Corporations and Commercial Code;

(d) register the entity in the nationwide database by:

(i) submitting an MU1 form that includes:

(A) all required identifying information;

(B) the name of the PLM who will serve as the entity's qualifying individual;

(C) the name of any individuals who may serve as control persons;

(D) the entity's registered agent; and

(E) any other trade name under which the entity will

operate; and

(ii) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(e) register any branch office operating from a different location than the entity;

(f) pay all fees through the nationwide database as required by the division and by the nationwide database;

(g) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(h) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(i) provide to the division complete documentation of any action taken by a regulatory agency against:

(i) the entity itself; or

(ii) any control person; and

(iii) not disclosed through a previous application or renewal; and

(j) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(5) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) if registering on or after November 1, 2010, the name of the ALM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (5).

(6) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(7) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the PLM exam shall be valid for 90 days.

(8) Incomplete PLM or ALM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(9) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(10) Other trade names.

(a) The division shall not approve a license for any person

operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

- (i) endorsed by the division, the state government, or the federal government;
- (ii) an agency of the state or federal government; or
- (iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

- (a) An applicant shall be denied a license for:
 - (i) criminal history as outlined in Section 61-2c-203(1)(a)-(f);
 - (ii) any misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:
 - (A) a conviction occurring within three years of the date of application;
 - (B) a plea agreement occurring within three years of the date of application; or
 - (C) a jail or prison release date falling within three years of the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

- (i) criminal convictions or plea agreements entered more than three years prior to the date of application, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;
- (ii) the circumstances that led to any criminal conviction or plea agreement under consideration;
- (iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;
- (iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
- (v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
- (vi) court findings of fraudulent or deceitful activity;
- (vii) evidence of non-compliance with court orders or conditions of sentencing;
- (viii) evidence of non-compliance with:
 - (A) terms of a diversion agreement still subject to prosecution;
 - (B) a probation agreement; or
 - (C) a plea in abeyance; or
- (ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;
- (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
- (c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;
- (d) evidence as to the applicant's business management

and employment practices, including the payment of employees, independent contractors, and third parties;

- (e) the extent and quality of the applicant's training and education in mortgage lending;
- (f) the extent and quality of the applicant's training and education in business management;
- (g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;
- (h) evidence of disregard for licensing laws;
- (i) evidence of drug or alcohol dependency;
- (j) sanctions placed on professional licenses; and
- (k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

- (a) access the credit information available through the NMLS of:
 - (i) an applicant for initial licensure, beginning October 18, 2010; and
 - (ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and
- (b) give particular consideration to:
 - (i) outstanding civil judgments;
 - (ii) outstanding tax liens;
 - (iii) foreclosures;
 - (iv) multiple social security numbers attached to the individual's name;
 - (v) child support arrearages; and
 - (vi) bankruptcies.
- (4) Age. An applicant shall be at least 18 years of age.
- (5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

- (1) School certification.
 - (a) A school offering Utah-specific education shall certify with the division before providing any instruction.
 - (b) To certify, a school applicant shall prepare and supply the following information to the division:
 - (i) contact information, including:
 - (A) name, phone number, and address of the physical facility;
 - (B) name, phone number, and address of any school director;
 - (C) name, phone number, and address of any school owner; and
 - (D) an e-mail address where correspondence will be received by the school;
 - (ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);
 - (iii) school description, including:
 - (A) type of school; and
 - (B) description of the school's physical facilities;
 - (iv) list of courses offered;
 - (v) proof that each course has been certified by the division;
 - (vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
 - (vii) proof that each instructor:
 - (A) has been certified by the division;
 - (B) is qualified as a guest lecturer; or
 - (C) is exempt from certification under Subsection 203(5)(f);
 - (viii) schedule of courses offered, including the days, times, and locations of classes;

- (ix) statement of attendance requirements as provided to students;
- (x) refund policy as provided to students;
- (xi) disclaimer as provided to students; and
- (xii) criminal history disclosure statement as provided to students.
- (c) Minimum standards.
 - (i) The course schedule may not provide or allow for more than eight credit hours per student per day.
 - (ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.
 - (iii) The disclaimer shall adhere to the following requirements:
 - (A) be typed in all capital letters at least 1/4 inch high; and
 - (B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."
 - (iv) The criminal history disclosure statement shall:
 - (A) be provided to students while they are still eligible for a full refund; and
 - (B) clearly inform the student that upon application with the nationwide database, the student will be required to:
 - (I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and
 - (II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;
 - (C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and
 - (D) include a section for the student's attestation that the student has read and understood the disclosure.
 - (d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.
 - (e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:
 - (i) complete a renewal application as provided by the division; and
 - (ii) pay a nonrefundable renewal fee.
 - (2) Utah-specific course certification.
 - (a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.
 - (b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.
 - (c) To certify a course, a school applicant shall prepare and supply the following information:
 - (i) instruction method;
 - (ii) outline of the course, including:
 - (A) a list of subjects covered in the course;
 - (B) reference to the approved course outline for each subject covered;
 - (C) length of the course in terms of hours spent in classroom instruction;
 - (D) number of course hours allocated for each subject;
 - (E) at least three learning objectives for every hour of classroom time;
 - (F) instruction format for each subject; i.e, lecture or media presentation;
 - (G) name and credentials of any guest lecturer; and
 - (H) list of topic(s) and session(s) taught by any guest lecturer;
 - (iii) a list of the titles, authors, and publishers of all required textbooks;
 - (iv) copies of any workbook used in conjunction with a non-lecture method of instruction;
 - (v) the number of quizzes and examinations; and
 - (vi) the grading system, including methods of testing and standards of grading.
 - (d) Minimum standards.
 - (i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.
 - (ii) The course shall cover all of the topics set forth in the associated outline.
 - (iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.
 - (iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:
 - (A) an accompanying workbook as approved by the division for the student to complete during the instruction; and
 - (B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.
 - (v) The division shall not approve an online education course unless:
 - (A) there is a method to ensure that the enrolled student is the person who actually completes the course;
 - (B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and
 - (C) there is a method to ensure that the student comprehends the material.
 - (3) Course expiration and renewal.
 - (a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.
 - (b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.
 - (c)(i) A division-approved continuing education course shall expire on whichever of the following occurs first:
 - (A) the expiration date printed on the certificate; or
 - (B) December 31, 2010.
 - (ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date:
 - (A) complete a renewal form as provided by the division; and
 - (B) pay a nonrefundable renewal fee.
 - (iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.
 - (iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.
 - (d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.
 - (e) As of January 1, 2011, any course offered for continuing education shall be approved through the nationwide database.
 - (4) Education committee.
 - (a) The commission may appoint an education committee to:
 - (i) assist the division and the commission in approving course topics; and
 - (ii) make recommendations to the division and the commission about:
 - (A) whether a particular course topic is relevant to residential mortgage principles and practices; and
 - (B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection (f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:

(A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;

(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or

(C) a combination of experience and education acceptable to the division; and

(ii) ability to effectively communicate the subject matter, as evidenced by:

(A) a state teaching certificate;

(B) successful completion of college courses acceptable to the division in the field of education;

(C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or

equivalent settings.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or

(B)(I) written explanation for why the instructor has not taught a class in the subject area within the past year; and

(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and

(C) a renewal fee as required by the division.

(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.

(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.

(v) As of January 1, 2011, any instructor proposing to teach a continuing education course shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor may reinstate an expired certification within 30 days of expiration by:

(A) complying with Subsection (g) as applicable to the type of course taught; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:

(A) complying with Subsection (g) as applicable to the type of course taught;

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).

- (b) To monitor schools and instructors, the division may:
 - (i) collect and review evaluation forms; or
 - (ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal.

- (1) Renewal period.
 - (a) Any person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.
 - (b) Any person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.
- (2) Qualification for renewal.
 - (a) Character.
 - (i) Individuals and control persons applying for a renewed license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.
 - (ii) An individual applying for a renewed license may not have:
 - (A) a felony that resulted in a conviction or plea agreement during the renewal period; or
 - (B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.
 - (iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:
 - (A) occurred during the renewal period; or
 - (B) were not disclosed and considered in a previous application or renewal.
 - (iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.
 - (b) Competency.
 - (i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.
 - (ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:
 - (A) occurred during the renewal period; or
 - (B) were not disclosed and considered in a previous application or renewal.
 - (iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.
 - (c) Continuing education.
 - (i) Beginning January 1, 2011, an individual who holds an active license as of October 31 of the calendar year shall complete, within the renewal period ending December 31 of the same calendar year, eight hours of non-duplicative continuing education:
 - (A) approved through the nationwide database; and
 - (B) consisting of:
 - (I) three hours federal laws and regulations;
 - (II) two hours ethics (fraud, consumer protection, fair lending);
 - (III) two hours non-traditional; and
 - (IV) one hour elective.
 - (ii) An individual who obtains a license on or after November 1 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.
 - (iii) Continuing education courses shall be completed within the renewal period.
 - (iv) Continuing education courses shall be non-duplicative

of courses taken in the preceding renewal period.

- (3) Renewal procedures for the renewal period ending December 31, 2010. In order to renew by December 31, 2010:
 - (a) an individual licensee shall:
 - (i) evidence having completed a minimum of:
 - (A) 20 hours of prelicensing education as approved by:
 - (I) the division; or
 - (II) the nationwide database; or
 - (B) 28 hours of division-approved continuing education in the two previous renewal cycles;
 - (ii) evidence having taken and passed a Utah licensing examination as approved by the commission;
 - (iii) register in the nationwide database by May 31, 2010;
 - (iv)(A) evidence having completed, since the date of last renewal, continuing education approved by either the division or the nationwide database, non-duplicative of any hours required to satisfy the registration education requirement under this Subsection (3)(a)(i), and:
 - (I) totaling 14 hours if licensed as of October 1, 2009; or
 - (II) totaling eight hours if licensed on or after October 1, 2009; or
 - (B) if licensed as a mortgage loan originator, evidence having completed, since January 1, 2010, all requirements to obtain an ALM or a PLM license, pursuant to Subsection R162-2c-201;
 - (v) take and pass the national component of the licensing examination as approved by the nationwide database;
 - (vi) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and
 - (vii) submit through the nationwide database:
 - (A) a request for renewal; and
 - (B) all fees as required by the division and by the nationwide database.
 - (b) an entity licensee shall:
 - (i) register in the nationwide database by May 31, 2010;
 - (ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;
 - (iii) submit through the nationwide database a request for renewal;
 - (iv) renew the registration of any branch office or other trade name registered under the license of the entity; and
 - (v) pay through the nationwide database all renewal fees required by the division and by the nationwide database.
 - (4) Renewal procedures for the renewal period ending December 31, 2011. In order to renew by December 31, 2011,
 - (a) an individual licensee shall:
 - (i) evidence having completed, since the date of last renewal, continuing education:
 - (A) as required by Subsection (2)(c);
 - (B) non-duplicative of any continuing education hours taken in the previous renewal cycle; and
 - (C) approved by the nationwide database;
 - (ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and
 - (iii) submit through the nationwide database:
 - (A) a request for renewal; and
 - (B) all fees as required by the division and by the nationwide database.
 - (b) an entity licensee shall:
 - (i) submit through the nationwide database a request for renewal;
 - (ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;
 - (iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(5) Reinstatement.

(a) To reinstate an expired license, a person shall, by February 28 of the calendar year following the date on which the license expired:

(i) comply with all requirements for an on-time renewal; and

(ii) pay through the nationwide database all late fees and other fees as required by the division and the nationwide database.

(b) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

- (i) name of licensee;
- (ii) contact information for licensee, including:
 - (A) mailing address;
 - (B) telephone number(s); and
 - (C) e-mail address(es);
- (iii) sponsoring entity; and
- (iv) license status (sponsored or non-sponsored); and
- (b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

- (i) name of licensee;
- (ii) contact information for licensee, including:
 - (A) mailing address;
 - (B) telephone number(s);
 - (C) fax number(s); and
 - (D) e-mail address(es);
- (iii) sponsorship information;
- (iv) control person(s);
- (v) qualifying individual;
- (vi) license status (sponsored or non-sponsored); and
- (vii) branch offices or other trade names registered under the entity license; and
- (b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

- (a) the entity;
- (b) a branch office registered under the license of the entity; or
- (c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

R162-2c-301. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who

fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal;

(v) comply with a division request for information within 10 business days of the date of the request; and

(vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

- (A) providing a buyer or seller of real estate with a comparative market analysis;
- (B) assisting a buyer or seller to determine the offering price or sales price of real estate;
- (C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
- (D) advertising the sale of real estate by use of any advertising medium;
- (E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
- (F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

- (A) the owner's contact information;
- (B) the owner's role;
- (C) the mortgage loan originator's contact information;

and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

- (A) contact information for the brokerage;
- (B) role of the brokerage;
- (C) mortgage loan originator's contact information; and
- (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) PLM.

(a) Affirmative duties. A PLM who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A PLM shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators.

(b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:

(i) actively supervise any such ALM; and

(ii) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators and unlicensed staff.

(c) A PLM who manages an entity that operates a branch office shall:

(i) actively supervise the BLM who manages the branch office; and

(ii) remain personally responsible and accountable for adequate supervision of:

(A) mortgage loan originators sponsored by the branch office;

(B) unlicensed staff working at the branch office; and

(C) operations and transactions conducted by the branch office.

(d) Prohibited conduct. A PLM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A PLM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(e) A BLM:

(i) shall be subject to the same affirmative duties as a PLM; and

(ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any disciplinary action taken against a licensee for unprofessional conduct.

(b) The division may report in the nationwide database a complaint that the division has assigned for investigation.

(c) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(x) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught;

(ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-302. Requirements for Record Retention and

Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Section 61-2c-302 the following records:

(i) application forms;

(ii) disclosure forms;

(iii) truth-in-lending forms;

(iv) credit reports and the explanations therefor;

(v) conversation logs;

(vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval; and

(xii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall take reasonable measures to safeguard personal information as that term is defined in Section 13-44-102.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

(i) an original or renewal application for a license;

(ii) an original or renewal application for a school certification;

(iii) an original or renewal application for a course certification; and

(iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

(i) be in writing;

(ii) be signed by the requestor; and

(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

(i) a complaint against a licensee; and

(ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative

proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

(i) a proceeding on an original or renewal application for a license;

(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

(c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-46b; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least ten days prior to the hearing, the division shall, by first

class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-46b-6, an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

**KEY: residential mortgage, loan origination, licensing, enforcement
November 22, 2010**

**61-2c-103(3)
61-2c-402(4)(a)**

R162. Commerce, Real Estate.**R162-2e. Appraisal Management Company Administrative Rules.****R162-2e-101. Title.**

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

- (1) "Affiliation" means a business association:
- (a) between:
 - (i) two individuals registered, licensed, or certified under Section 61-2b; or
 - (ii) an individual registered, licensed, or certified under Section 61-2b and:
 - (A) an appraisal entity; or
 - (B) a government agency;
 - (b) for the purpose of providing an appraisal service; and
 - (c) regardless of whether an employment relationship exists between the parties.
- (2) The acronym "AMC" stands for appraisal management company.
- (3) As used in Subsection R162-2e-201(3)(c)(ii), "business day" means a day other than:
- (a) a Saturday;
 - (b) a Sunday;
 - (c) a state or federal holiday; or
 - (d) any other day when the division is closed for business.
- (4) "Client" is defined in Section 61-2e-102(10).
- (5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:
- (a) is competent according to USPAP standards;
 - (b) recognizes and agrees to comply with:
 - (i) laws and regulations that apply to the appraiser and to the assignment;
 - (ii) assignment conditions; and
 - (iii) the scope of work outlined by the client; and
 - (c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:
 - (i) multiple listing service data; and
 - (ii) county records.
- (6) "Select" means:
- (a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and
 - (b) for purposes of assigning an appraisal activity to an appraiser:
 - (i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or
 - (ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.
- (7) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

- (1) The division may not register or renew the registration of an AMC that fails to:
- (a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act"; or
 - (b) comply with any provision of these rules.
- (2) The division shall schedule a hearing before the board for an AMC that:
- (a)(i) applies for registration or renewal of registration;
 - (ii) has a control person who discloses, or the division

finds through its own research, an issue that might affect the control person's moral character; and

(iii) the division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the AMC's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

(3)(a) An AMC shall register with the division in the name of the legal entity under which it conducts the business of appraisal management in Utah and in other states.

(b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:

(i) at the time of registration; or

(ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.

(c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:

(i) in writing; and

(ii) within ten business days of making the change.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

(1) an appraiser who is added to the panel is licensed or certified; and

(2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

(1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and

(2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

(1) its system for maintaining a record of:

(a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and

(ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and

(b) the client that requested the appraisal report;

(2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;

(3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;

(4) the location where the records are kept; and

(5) the name of the records custodian.

R162-2e-304. Required Disclosure.

In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(1) at the time an assignment is offered, disclose to the appraiser:

(a) the total amount that the appraiser may expect to earn from the assignment, disclosed as a dollar amount;

(b)(i) the property address;

(ii) the legal description; or

(iii) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(c) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(d) any known deadlines within which the assignment must be completed;

(2) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(3) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(a) the total fee that will be collected by the AMC for the assignment; and

(b) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(4) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

R162-2e-401. Unprofessional Conduct.

(1) An AMC commits unprofessional conduct if the AMC:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited

to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report; or

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-107.1.6 if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

KEY: appraisal management company, conduct, registration

November 10, 2010

61-2e-102

61-2e-103

61-2e-304

61-2e-305

R162. Commerce, Real Estate.**R162-57a. Timeshare and Camp Resort Rules.****R162-57a-1. Title and Authority.**

(1) This section shall be known as the "Timeshare and Camp Resort Rules."

(2) The authority to make rules for the timeshare and camp resort industries is granted to the division director by Section 57-19-3.

R162-57a-2. Definitions.

(1) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.

(2) "Amendment" means a change to an original registration as to information submitted pursuant to Subsection R162-57a-5(3)(j)-(y).

(3) "Annual report" means information submitted to the division in order to renew a project registration, including the following:

(a) the number of intervals, memberships, or other interests sold since the registration was issued or last renewed;

(b) the total number of intervals, memberships, or other interests sold since the date of initial registration;

(c) the number of intervals, memberships, or other interests reacquired by foreclosure or similar proceeding that had previously been reported as sold;

(d) the total number of registered but unsold intervals, memberships, or other interests as of the date of the annual report; and

(e) the total number of intervals, memberships, or other interests that have been registered.

(4) The acronym "ATR" means ARELLO Timeshare Registry, which is the online database system through which developers may register projects with the division.

(5) "Business day" means a day other than a:

(a) Saturday;

(b) Sunday; or

(c) state or federal holiday.

(6) "Common promotional plan" means a plan whereby multiple timeshare or camp resort interests, whether in the same location or not, are advertised and/or offered for disposition without the ownership of the interests being differentiated or distinguished.

(7) "Common facilities" means areas and amenities within a project to which all purchasers share an equal right of access and use.

(8) "Consolidation" means the registration of additional interests in a project for which the director has previously issued a registration.

(9) "Day" means calendar day unless specified as "business day."

(10) "Direct sales presentation" means a meeting in which a salesperson provides information about project(s) or interest(s) to one or more prospective purchasers.

(11) "Entity" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) another organization.

(12) "Expired registration" means a project or salesperson registration that may not be used to market interests because the holder of the registration failed to renew it by or before the expiration date.

(13) "Marketing of interests" means implementing a common promotional plan through:

(a) print media;

(b) direct mailings;

(c) television, radio, or Internet advertising;

(d) in-person communication;

(e) sales presentations; or

(f) any other method of contacting a prospective purchaser.

(14) "Notice of defect" means a written communication from the director informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:

(a) registration;

(b) consolidation; or

(c) renewal.

(15) "Person" means an individual or an entity.

(16) "Personal information" means data that may be used to identify or contact a prospective purchaser, including:

(a) name;

(b) home or business address;

(c) home, business, or cell telephone number; and

(d) e-mail address.

(17) "Prospective purchaser" means a person who:

(a) attends a sales presentation;

(b) communicates with a developer or salesperson in order to obtain information about a project;

(c) provides personal information to a developer or salesperson; or

(d) is solicited by a developer or salesperson through any type of marketing.

(18) "Property report" means a document that includes:

(a) disclosures required pursuant to Section 57-19-11;

(b) a cover sheet as generated and provided by the division; and

(c) a receipt generated by the division.

(19) "Public offering statement" has the same meaning as "property report."

(20) "Registration" means:

(a) as to a project, division approval of the project as being suitable for marketing of interests; and

(b) as to a salesperson, division approval for the salesperson to engage in the marketing of interests.

(21) "Reinstatement period" means a 30-day period following the expiration of registration during which a person may reinstate an expired registration by submitting all required renewal materials and paying applicable fees.

(22) The acronym "RELMS" means Real Estate License Management System, which is the online forum through which registered salespersons may submit forms and information to the division.

(23) "Renewal" means extending a registration for an additional period on or before the date the registration expires.

(24) "Supplement" means a change in the information submitted pursuant to Subsection R162-57a-5(3)(a)-(i).

(25) "Temporary permit" means authorization from the division for a developer to engage in the marketing of interests for a period not to exceed 30 days.

R162-57a-5. Project Registration.

(1) Registration required.

(a) A person may not engage in the marketing of interests unless:

(i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and

(ii) each individual who will engage in marketing is registered as salesperson pursuant to Section 57-19 et seq. and these rules.

(b)(i) A project is not considered registered until the developer seeking registration obtains from the division:

(A) a complete property report, approved by the division;

and

- (B) an order of registration.
- (ii) A salesperson is not considered registered until the individual receives a registration from the division.
- (c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the marketing of interests.
- (2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:
 - (a) through the ATR; or
 - (b) if the developer obtains advance permission from the division, directly to the division.
- (3) Required Information. A developer shall submit to the division:
 - (a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;
 - (b) as to each officer, partner, director, and owner of the developer:
 - (i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;
 - (ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and
 - (B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;
 - (iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:
 - (A) conviction;
 - (B) plea in abeyance;
 - (C) diversion agreement;
 - (D) sentence of confinement; or
 - (E) dismissal; and
 - (iv) as applicable, documentation of any bankruptcy filing by:
 - (A) the individual; or
 - (B) an entity in which the individual has held:
 - (I) an ownership interest; or
 - (II) a position as a manager, officer, or director;
 - (c) evidence that the developer is registered in good standing with the Utah Division of Corporations;
 - (d) corporate resolution naming a resident agent to act on behalf of the developer;
 - (e) copy of the current articles of incorporation or other instrument creating the developer entity;
 - (f) copy of the current bylaws of the developer entity;
 - (g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;
 - (ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to market interests;
 - (iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;
 - (h) name of any salesperson who will market the project;
 - (i) name of the individual who will be responsible for directly supervising the salesperson(s) marketing the project;
 - (j) legal description of the property upon which the project is located;
 - (k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;
 - (l)(i) copy of any instrument by which the developer acquired interest in the project; or
 - (ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:
 - (A) if the property is situated within Utah:
 - (I) a title opinion from a title insurer licensed in Utah; or
 - (II) an opinion letter from an independent, third party attorney actively licensed in Utah;
 - (B) if the property is situated outside of Utah, an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and
 - (C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;
 - (m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;
 - (n) statement of the zoning and other governmental regulations affecting the use of the project;
 - (o) existing and proposed taxes or special assessments that affect the project;
 - (p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and
 - (ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;
 - (q) topographic map and accompanying statement describing the general topography and physical characteristics of the project, including:
 - (i) terrain;
 - (ii) soil conditions;
 - (iii) flood control; and
 - (iv) climate;
 - (r) copy of any:
 - (i) recorded declaration of condominium;
 - (ii) recorded covenants, conditions, and restrictions (CCRs); and
 - (iii) instrument governing the project and incorporating all covenants of the grantor or lessor;
 - (s) copy of any plan to create an association for project owners;
 - (t) narrative description of the promotional plan for the disposition of the project;
 - (u) statement disclosing any inducement that will be offered in connection with the marketing of the project;
 - (v) map showing:
 - (i) the location of the interests and other improvements on the property;
 - (ii) the relation of the project to existing streets, roads, and other off-site improvements; and
 - (iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;
 - (w)(i) statement of improvements and amenities to be installed that have not been completed;
 - (ii) schedule for completion;
 - (iii) evidence that the developer has obtained all necessary permits; and
 - (iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:
 - (A) escrow or trust agreements;
 - (B) performance bonds; or
 - (C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;
 - (x)(i) provisions for maintenance to both existing and planned improvements and amenities; and
 - (ii) estimated cost of such maintenance to purchasers;
 - (y) description of any corrective work that must be

performed on or relating to the project before particular interests are suitable for use;

- (z) completed application as required by the division; and
- (aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

- (5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

- (6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

- (i) until the defect is cured and a registration obtained; or
- (ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

- (7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

- (A) conviction within the five-year period preceding the date of application;

- (B) plea agreement within the five-year period preceding the date of application; or

- (C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

- (A) conviction within the three-year period preceding the date of application; or

- (B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

- (ii) a property report cover sheet, which the developer

shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

- (8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

- (9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to market interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the marketing of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:

(A) against the developer by a court or a government agency; and

(B) based on:

(I) conduct or a practice involving the marketing of interests; or

(II) conduct involving fraud, misrepresentation, or deceit; and

(vii) a judicial proceeding instituted by a purchaser against the developer and arising out of or relating to:

(A) the advertising or sale of an interest;

(B) disclosures required under Section 57-19-11;

(C) rescission rights;

(D) fraud; or

(E) misrepresentation of interests represented by the registration.

(b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

- (10) Amendment and supplement to initial registration.

(a) To submit an amendment to a registration, a developer shall:

(i) complete an amendment filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(b) To submit a supplement to a registration, a developer shall:

(i) complete a courtesy filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

R162-57a-8. Restrictions on Proposed Advertising.

(1) Advertising that promotes gifts and other awards in connection with attending a sales presentation shall:

(a) disclose any conditions precedent to the receipt of the gift or other award; and

(b) if receipt of a specific advertised gift or other award is not guaranteed by virtue of attendance at the sales presentation, state the odds of any attendee's chance of receiving the gift or

other award.

- (2) A substitute gift, inducement, or award:
- (a) shall be equal in value or use to the gift, inducement, or award that was originally promised; and
 - (b) may not burden the recipient with additional travel expense in order to receive the value of the gift, inducement, or award.

R162-57a-9. Renewal and Reinstatement of Project Registration.

(1) Project registration renewal. To renew a registration of a project, a person shall submit to the division, no later than the expiration date set forth on the order of registration:

- (a) an annual report;
- (b)(i) an updated property report, with changes underlined in red; or
- (ii) a statement that no changes have occurred in the property report that is on record with the division;
- (c) a description of any change in the information provided in the application for registration;
- (d) documentation of any judicial proceeding or regulatory investigation instituted by complaint of a purchaser against the developer and arising out of or relating to:
 - (i) the advertising or sale of an interest;
 - (ii) disclosures required under Section 57-19-11;
 - (iii) rescission rights;
 - (iv) fraud; or
 - (v) misrepresentation of interests represented by the registration; and

(e) a nonrefundable renewal fee.

(2) Reinstatement.

(a) To reinstate an expired project registration, a person shall submit to the division, no later than 30 calendar days following the expiration of the registration:

- (i) all materials required for a timely renewal; and
- (ii) a nonrefundable late fee.

(b) A registration that is expired more than 30 days may not be renewed or reinstated. To obtain a registration, a person shall apply as a new applicant.

R162-57a-11. Disclosure Required.

(1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:

- (a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;
- (ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and
- (iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or

(b) if acceptable to the director, approved by another state.

(2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:

- (i) a cover sheet, which the developer shall use as the first page of the property report; and
- (ii) a receipt for property report, which the developer shall use as the last page of property report.

(b) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

(i) at the beginning of a direct sales presentation; or

(ii) if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

(1) Developer.

(a) Affirmative duties. A developer or an individual designated by the developer shall:

- (i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;
- (ii) provide the complete property report to each prospective purchaser;
- (iii) obtain a signed receipt for property report from a prospective purchaser prior to:

(A) executing a purchase agreement; or

(B) receiving any item of value toward the purchase of an interest; and

(iv) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser contacts:

(A) the developer;

(B) a subsidiary of the developer; or

(C) a person affiliated with the developer or a subsidiary of the developer.

(b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:

(i) makes a misrepresentation or material omission in a document submitted to the division; or

(ii) fails to comply with an order of the division.

(2) Salesperson. A salesperson shall comply with:

(a) Section 57-19 et seq.;

(b) these rules; and

(c) this Subsection (1)(a)(ii)-(iv).

R162-57a-15. Application for Registration of Project Sales Persons.

(1) An individual applying for registration as a project salesperson shall provide the following information to the division:

(a) identifying information, including:

(i) full legal name;

(ii) date of birth; and

(iii) social security number;

(b) contact information, including:

(i) home address;

(ii) home telephone and cell telephone numbers;

(iii) mailing address;

(iv) e-mail address;

(v) sales office location and e-mail address;

(vi) sales office telephone number; and

(vii) name of developer or an individual designated by the developer who will supervise the applicant pursuant to Subsection R162-57a-13(1)(a).

(c)(i) disclosure as to whether the individual has ever been licensed or registered in a real estate-related profession; and

(ii) documentation of any adverse regulatory action on such license or registration, including:

(A) denial;

(B) restriction, including probation;

(C) suspension;

(D) revocation; or

(E) fine;

(d) disclosure as to whether the individual has ever resigned or surrendered a real estate-related license or registration, or allowed such a license or registration to expire, while under investigation or while action was pending against the individual by a government agency;

(e) information as to any disciplinary action pending against the individual at the time of application by any real estate, professional, or occupational licensing agency;

(f) documentation of any criminal investigation proceeding against the individual at the time of application;

(g) complete documentation of any past criminal offense, including:

- (i) charge(s) filed;
- (ii) plea(s) entered;
- (iii) case disposition; and
- (iv) terms of sentencing;
- (h) complete documentation of any past civil judgment entered against the person in a case brought on allegations involving fraud, misrepresentation, or deceit;
- (i) completed five-year employment history form as provided by the division;
- (j) affidavit stating whether the individual has ever been terminated from employment on an allegation of theft, fraud, or dishonesty; and
- (k) a nonrefundable application fee.
- (2) An application for registration as a project salesperson shall be signed by:
 - (a) the applicant; and
 - (b)(i) the developer with which the salesperson is affiliated; or
 - (ii) the developer's authorized representative pursuant to Subsection R162-57a-13(1)(a).
- (3) Standards for approval. The director may not issue a salesperson registration to any individual who:
 - (a) submits an incomplete application;
 - (b) has been prosecuted for a felony that resulted in a:
 - (i) conviction within the five-year period preceding the date of application;
 - (ii) plea agreement within the five-year period preceding the date of application; or
 - (iii) jail or prison release date falling within the five-year period preceding the date of application; or
 - (c) has been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:
 - (i) conviction within the three-year period preceding the date of application; or
 - (ii) jail or prison release date falling within the three-year period preceding the date of application.
 - (4) Notification of changes.
 - (a) A registered salesperson shall inform the division within ten days of:
 - (i) any change in the individual's legal name;
 - (ii) any change in the individual's contact information pursuant to Subsection (1)(b);
 - (iii) as to a criminal offense, whether prosecuted in Utah or in another jurisdiction:
 - (A) a conviction;
 - (B) the entry of a plea in abeyance;
 - (C) a diversion agreement; or
 - (D) any other agreement under which a criminal charge is held in suspense for a period of time.
 - (b) To notify the division of a name change, an individual shall:
 - (i) complete and submit a paper change form; and
 - (ii) attach to the form official documentation such as a:
 - (A) marriage license;
 - (B) divorce decree;
 - (C) driver license; or
 - (D) court order.
 - (c) To notify the division of a change in contact information, an individual shall submit a change form:
 - (i) by mail or fax, until such time as RELMS is configured to accommodate timeshare salespersons; and
 - (ii) through RELMS, once the system is configured to accommodate timeshare salespersons.
 - (d) To notify the division of proceedings in a criminal case, an individual shall:
 - (i) send to the division a cover letter explaining the circumstances under which charges were brought; and
 - (ii) attach all available documentation, including:
 - (A) charging documents;

- (B) police reports; and
- (C) court dockets.
- (5) Renewal and reinstatement.
 - (a) A salesperson registration expires two years following the date the registration is approved by the division.
 - (b) To renew a salesperson registration, an individual shall submit to the division, no later than the date on which the individual's registration expires:
 - (i) a completed renewal application as required by the division; and
 - (ii) a nonrefundable fee.
 - (c) To reinstate an expired salesperson registration, and individual shall submit to the division, no later than 30 days following the date on which the individual's registration expires:
 - (i) all materials required for a timely renewal; and
 - (ii) a nonrefundable late fee.
 - (d) An application that is expired more than 30 days may not be renewed. To obtain a registration, an individual shall apply as a new applicant.

R162-57a-17. Administrative Procedures.

The following matters shall be decided by the director through an informal adjudicative proceeding, with no hearing permitted:

- (1) issuance of an initial registration;
- (2) renewal or reinstatement of an existing registration;
- (3) denial of any application for registration; and
- (4) a request:
 - (a) to amend a property report;
 - (b) for consolidation of a registration;
 - (c) for waiver of, or exemption from, registration requirements; and
 - (d) for a temporary permit pending registration with the division.

R162-57a-26. Exemptions.

(1) The following sales are essentially noncommercial and, therefore, exempt from the requirements of Section 57-19, et seq. by operation of law:

- (a) the bulk sale of interests by a developer to another person who will become the developer of the project;
- (b) after a project has been sold out and its registration with the division has expired, the resale of interests that are foreclosed by the developer or the developer's successor-in-interest, so long as:
 - (i) no more than ten interests in the project are foreclosed and resold over the life of the project; and
 - (ii) the foreclosed interests are not offered with interests in other projects as part of a common promotional plan;
- (c) the resale by a lender of foreclosed interests, so long as the lender does not foreclose more than ten interests in the project over the life of the project;
- (d) the sale, to a person who has previously purchased an interest in a project, of additional interests in the same project, provided that the person is timely provided with a valid property report at the time of the original purchase; and
- (e) the sale of a purchaser's individual interest on a for-sale-by-owner basis.

(2)(a) A person who believes a sale not specifically delineated in Subsection (1) is essentially non-commercial shall apply to the division for an order of exemption.

(b) An exemption granted under this Subsection (2)(a) is valid for a period of one year and expires unless renewed through reapplication.

KEY: timeshare, camp resort, registration, professional conduct

November 8, 2010

57-19-3

57-19-5 through 57-19-26

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.

R164-2-2. Custody Requirements for Investment Advisers.

(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 forth the requirements for investment advisers with custody of client funds or securities.

(B) It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for an investment adviser licensed or required to be licensed under Section 61-1-3 to have custody of client funds or securities unless the investment adviser complies with the requirements of Rule 206(4)-2 of the Investment Advisers Act of 1940 (amended 2010), which is adopted and incorporated by reference.

(C) For purposes of this rule and any determination of whether an investment adviser has custody of client funds or securities, "custody" is defined as in Rule 206(4)-2(d)(2) of the Investment Advisers Act of 1940.

KEY: securities, securities regulation, investment advisers, custody requirements

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61-1-2

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61-1-24

R164. Commerce, Securities.**R164-4. Licensing Requirements.****R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.**

(A) Authority and purpose
 (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of FINRA and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with FINRA. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by FINRA, the CRD, or the SEC:

(1)(a)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by FINRA, and any other exams required by the SEC or FINRA; and

(1)(a)(iii) a license fee as specified in the Division's fee

schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, FINRA Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of FINRA Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) FINRA Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew a license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) FINRA Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or FINRA Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.**(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Designated Official" means a person that is a partner,

officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(5) "IARD" means the Investment Adviser Registration Depository.

(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18 of Form ADV Part 2; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) a notification:

(aa) identifying the applicant's designated official; and

(bb) indicating whether the applicant will have either custody of or discretionary authority over client funds or securities.

(1)(c)(ii) If the applicant will have custody of or discretionary authority over client funds or securities, the applicant must provide Division Form 4-5BIA - Indemnity Bond of Investment Adviser or documents containing the information provided on Division Form 4-5BIA, or, alternatively, proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) FINRA Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b),

applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following:

(2)(a) To the IARD:

(2)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18 of Form ADV Part 2;

(2)(a)(ii) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official).

(2)(b) To the CRD:

(2)(b)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official and any investment adviser representatives.

(2)(c) To the Division:

(2)(c)(i) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5; and

(2)(c)(ii) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of \$1,200 per client, or if the investment adviser has custody or possession of clients' funds or securities.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed FINRA Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's FINRA Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment

adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (G) if:

(4)(a)(i) Advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by FINRA.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "IARD" means the Investment Adviser Registration Depository operated by FINRA.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which FINRA processes FINRA Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be

deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, FINRA Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

RI164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and

Investment Advisers.**(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5 or is not required to post a bond under Section R164-4-5(F)(2)(a), an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than \$1,200 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next

business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.**(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of \$25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least \$25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who:

(2)(a) have custody solely as a consequence of the adviser's authority to withdraw advisory fees from client accounts; or

(2)(b) comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or

profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

R164-4-9. Exemptions From Licensing Requirements for Investment Advisers Providing Advice to Certain Institutional Investors.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than \$10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public

offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain Institutional Investors

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair

market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements

November 22, 2010	61-1-3
Notice of Continuation July 30, 2007	61-1-4
	61-1-5
	61-1-6
	61-1-13
	61-1-14
	61-1-24

R164. Commerce, Securities.**R164-5. Broker-Dealer and Investment Adviser Books and Records.****R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.****(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(1991)) and 15c2-11 (17 CFR 240.15c2-11(1996)), which are adopted and incorporated by reference.

(2) To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

(D) Investment adviser requirements

(1) Except as provided in subparagraph (D)(3), unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(August 12, 2010)), which is adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.**(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the annual financial reports required of a broker-dealer and an investment adviser.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E).

(D) Investment Adviser required financial statements

(1) Except as provided in subparagraph (D)(2), each investment adviser who has custody or possession of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$1,200 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(2) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state, is in compliance with such state's financial reporting requirements, and annually files with the Division a copy of any financial reports filed with such state.

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 120 days following the end of the investment adviser's fiscal year.

KEY: securities, securities regulation, recordkeeping, financial requirements**November 22, 2010****Notice of Continuation July 30, 2007****61-1-5****61-1-24**

R251. Corrections, Administration.**R251-102. Release of Communicable Disease Information.****R251-102-1. Authority and Purpose.**

- (1) This rule is authorized under Section 64-13-36(3)(a).
- (2) The purpose of this rule is to designate the persons who will be permitted access to information in Department of Corrections inmate medical files.

R251-102-2. Definitions.

- (1) "AIDS" means Acquired Immunodeficiency Syndrome.
- (2) "Communicable Disease" means any of a group of diseases easily transmitted from one person to another.
- (3) "HIV" means Human Immunodeficiency Syndrome.
- (4) "inmates" means offenders in the secure facilities of the Department.

R251-102-3. Access to Information in Medical Files.

- (1) Information in an inmate's medical file may include:
 - (a) results of tests conducted for communicable diseases, including AIDS and HIV; and
 - (b) information self-admitted by an inmate.
- (2) The Department shall provide information regarding communicable diseases to:
 - (a) the Board of Pardons and Parole;
 - (b) designated Department Adult Probation and Parole agents; and
 - (c) other Department employees, if necessary, based on legitimate penological interests as determined by a division director in consultation with Clinical Services.

KEY: medical records, communicable diseases**January 4, 2001****64-13-10****Notice of Continuation November 30, 2010**

R251. Corrections, Administration.**R251-109. Sex Offender Treatment Providers.****R251-109-1. Authority and Purpose.**

- (1) This rule is authorized by Section 76-5-406.5.
- (2) The purpose of the rule is to define the criteria and guidelines for the standards, application and approval process, and program requirements for sex offender treatment providers.

R251-109-2. Definitions.

- (1) "Approved provider status" means status as a provider for sex offender services through the Utah Department of Corrections.
- (2) "Affiliate approval" means approval of a professional who does not meet experience requirements and is seeking to become approved as a provider.
- (3) "Direct clinical experience" means face-to-face contact with patients/clients, direct supervision, training, case coordination and research.
- (4) "Formal training" means education and/or supervised experience in the required field; may be provided at an accredited college or university or at seminars or conferences.
- (5) "Full disclosure" means the complete discussion during treatment of all previous adjudicated and unadjudicated sexual offenses.
- (6) "Provider" means a therapist who has been approved by the Department to provide services to sex offenders under the jurisdiction of the Utah Department of Corrections.
- (7) "Provider supervision" means one hour of supervision for every 40 hours of direct client contact with a minimum of one hour supervision per month.
- (8) "Screening committee" means group of Department of Corrections employees assigned to screen and approve applications from providers to provide sex offender treatment.
- (9) "SO" means sex offender.
- (10) "SOP" means Sex Offender Program.
- (11) "Transition program" means program designed to help offenders move from residential to non-residential treatment; also to help them move from intensive to progressively less intensive treatment.
- (12) "UDC" means Utah Department of Corrections.

R251-109-3. Provider Standards and Requirements.

It is the policy of the Department that:

- (1) all potential providers of sex offender treatment shall be screened to ensure they meet the specific established standards and qualifications for providers of sex offender treatment;
- (2) providers shall have a basic requirement that full disclosure of all criminal sexual behavior by the offender is a basic requirement for successful completion of therapy;
- (3) approved providers must reapply to UDC every three years to renew their approved provider status;
- (4) providers shall have a current Utah license to practice therapy in a mental health profession which shall include:
 - (a) psychiatry;
 - (b) psychology;
 - (c) social work; or
 - (d) marriage and family therapy;
- (5) providers' education shall include:
 - (a) a master's or doctorate degree from a fully accredited college or university in:
 - (i) social work;
 - (ii) psychology; or
 - (b) a medical doctor if board certified/eligible psychiatrist; or
 - (c) a doctor of osteopathy if board certified/eligible psychiatrist;
- (6) within four years immediately preceding application for approval, the provider shall have at least 2,000 hours of

direct clinical experience in sex offender treatment, which include:

- (a) at least 500 hours of sex offender evaluation experience; and
- (b) at least 1,000 hours of sex offender treatment experience;
- (7) within three years immediately preceding application, the provider shall have received at least 40 hours of sex offender specific formal training;
- (8) licensed professionals and professionals in graduate training and/or post graduate residency who do not meet the experience and training requirements may apply for affiliate approval;
- (9) affiliate approval shall require that the applicant arrange for ongoing provider supervision of therapy by an approved provider;
- (10) affiliates may provide services as part of a degree program leading to licensure;
- (11) required training may be obtained through approved:
 - (a) documented conferences;
 - (b) symposia;
 - (c) seminars; or
 - (d) other course work;
- (12) the training shall be directly related to the treatment and evaluation of sex offenders;
- (13) the training may include:
 - (a) behavioral/cognitive methods;
 - (b) reconditioning and relapse prevention;
 - (c) use of plethysmograph examinations;
 - (d) use of polygraph examinations;
 - (e) group therapy;
 - (f) individual therapy;
 - (g) sexual dysfunction;
 - (h) victimology;
 - (i) couples and family therapy;
 - (j) risk assessment;
 - (k) sexual addiction;
 - (l) sexual deviancy; and
 - (m) ethics and professional standards;
- (14) prior to and during approval, all providers must agree to abide by reporting and other requirements established by UDC and the laws and statutes of the state of Utah;
- (15) reporting requirements shall include the offender's:
 - (a) progress in therapy;
 - (b) prognosis; and
 - (c) risk to the community; and
- (16) failure to comply with reporting requirements may result in a provider being removed from the approved list.

R251-109-4. Application Process.

- (1) All individuals providing services are required to be approved.
- (2) Each applicant shall provide all of the required documentation at the time of submission. If not, the packet shall be returned to the provider.
- (3) Individuals or affiliates who are supervised by an approved individual or agency may begin providing services pending approval once UDC receives their application packet.
- (4) Reapplication shall include:
 - (a) documentation demonstrating continuing education and training in sex offender specific treatment of not less than forty hours every three years;
 - (b) current licensure with the state of Utah;
 - (c) hours of therapy/supervision per year provided; and
 - (d) information on any changes in modality of treatment.
- (5) Failure to reapply shall result in the provider being removed from the approved provider list.

R251-109-5. Approval Process.

(1) It is the policy of UDC that all therapists providing services to sex offenders under the jurisdiction of UDC shall have been reviewed and approved by UDC.

(2) Approval may be suspended by either the provider or UDC.

(3) A provider shall be removed from the list of approved providers by written request to UDC.

(4) UDC may suspend approval for:

- (a) failure to reapply;
- (b) failure to comply with provider protocol;
- (c) suspension of clinical licensure;
- (d) failure to meet provider standards; or
- (e) criminal conviction; or

(f) other legitimate penological reasons as determined by the division director.

(5) Providers who are not approved may appeal that decision to the screening committee within thirty days of denial.

(6) Appeals must contain specific documentation of why the denial was inaccurate.

R251-109-6. Program Requirements.

(1) It is the policy of UDC that each provider meet certain accepted standards for treatment of sex offenders.

(2) Treatment programs for sexual offenders convicted of crimes against persons shall have the following intake components available:

(a) complete psycho-sexual evaluation, to include:

- (i) sex offender specific testing;
- (ii) assessment of personality and intelligence using testing instruments recognized in the treatment community as valid tools; and

(iii) penile plethysmograph testing, with stimuli which conforms to state statute, for male offenders and polygraph examinations for female offenders to determine arousal patterns and establish baselines.

(3) Polygraph examination shall be used for male offenders when deemed appropriate by the provider or UDC staff.

(4) Following assessment, the provider shall submit a written report to UDC staff including:

- (a) findings of testing including specifics on offender's risk to community safety;
- (b) the offender's suitability for treatment;
- (c) a proposed treatment plan; and
- (d) the cost to the offender.

(5) The standard treatment shall include:

- (a) sex offender groups;
- (b) individual therapy;
- (c) psycho-educational classes;
- (d) ongoing transition program; and
- (e) a minimum of one monthly progress report to UDC staff.

(6) An intensive treatment program shall be available which includes:

- (a) two weekly sex offender group sessions;
- (b) individual weekly session;
- (c) psycho-educational classes;
- (d) on-going transition program; and
- (e) a minimum of one monthly progress report to UDC staff.

(7) Intensive treatment shall be conducted on a minimum of three different days per week.

(8) When treatment is terminated unsuccessfully, the provider shall:

- (a) notify UDC staff prior to termination; and
- (b) provide a written report to the UDC staff within seven days of termination, addressing:
 - (i) reason for termination;
 - (ii) progress of the offender to date;

(iii) prognosis of the offender; and

(iv) the offender's risk to community.

(9) When treatment is terminated successfully, the provider shall:

(a) notify UDC staff of the recommendation to terminate therapy; and

(b) provide a written report to UDC staff addressing:

- (i) issues addressed in therapy;
- (ii) the offender's compliance with the treatment plan;
- (iii) progress made by the offender;
- (iv) prognosis of the offender; and

(v) results of a current (less than 90 days old), if appropriate, plethysmograph or polygraph.

(10) As requested, the provider shall submit written reports to UDC, courts and the Board of Pardons and Parole, as applicable.

(11) With reasonable notification, therapists shall appear in court or before the Board of Pardons and Parole as needed.

KEY: mental health, psychiatric personnel, psychotherapy April 5, 1996

64-13-10

Notice of Continuation November 30, 2010

R251. Corrections, Administration.**R251-110. Sex Offender Registration Program.****R251-110-1. Authority and Purpose.**

- (1) This rule is authorized under Section 77-27-21.5.
- (2) The purpose of the rule is to define the registrant requirement and process for obtaining sex offender registration information.

R251-110-2. Definitions.

- (1) As used in this section:
 - (a) "Department" means Utah Department of Corrections;
 - (b) "registrant" means any individual who is registered under UCA 77-27-21.5; and
 - (c) "Sex Offender Registration Unit" means the unit of the Department assigned to manage the state's sex offender registration program, sex offender information files and disseminate information on sex offenders.

R251-110-3. Registrant Requirements.

- (1) A sex offender as defined under Section 77-27-21.5 shall adhere to the provisions in stated code.
- (2) Registrants shall sign the Utah Sex Offender Registration Form and the Sex Offender Address Form upon each request.

R251-110-4. Public Access to Sex Offender Registry.

- (1) If members of the public do not have access to the sex offender registry website, they may request sex offender registration information from the Department's Sex Offender Registration Unit.
 - (a) Requests may be in writing with a return address and telephone number.
 - (b) Requests shall be sent to the Utah Department of Corrections, Sex Offender Registration Unit, 14717 S. Minuteman Drive, Draper, Utah 84020.
 - (c) If a requestor changes his residence after having submitted a request, but prior to receiving a response from the Department, it is the requestor's obligation to file another request with a current return address and telephone number.
 - (d) Members of the public may request information by telephone.

R251-110-5. Instructions for Use of the Information.

- (1) Information compiled for this registry may not be used to harass or threaten sex offenders or their families.
- (2) Harassment, stalking, or threats are prohibited and doing so may violate Utah criminal law.

KEY: sex crimes, notification

March 21, 2003

Notice of Continuation November 30, 2010

64-13-10

77-27-21.5

R251. Corrections, Administration.**R251-301. Employment, Educational or Vocational Training for Community Correctional Center Offenders.****R251-301-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63-46a-3, 64-13-10 and 64-13-14.5.

(2) The purpose of this rule is to provide the requirements for employers who employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

R251-301-2. Definitions.

(1) "Center" means a community correctional halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Educational or vocational training" means that an offender is participating or is enrolled in an educational or vocational training program that is recognized as being fully accredited by the state, which includes academic, applied-technology or correspondence courses, and in which the student is matriculated or has declared intent to be involved in program-completion or degree-attainment within a reasonable period of time.

(3) "Minimum wage" means compensation paid for hours worked in accordance with federally established guidelines.

(4) "Offender" means a person under the jurisdiction of the Department of Corrections residing in a community correctional center.

R251-301-3. Policy.

It is the policy of the Department that:

(1) Center offenders should be employed or participate in educational or vocational training on a full-time basis;

(2) offenders participating in educational or vocational training should have sufficient means to meet their financial obligations; and

(3) employers and offenders shall be informed in writing of the Center's rules governing employment, including:

(a) Offenders shall be accountable for all time spent away from the Center;

(b) employers shall contact Center staff when they need the offender to work overtime or work on a day off;

(c) offenders shall not consume alcoholic beverages;

(d) offenders shall have legitimate employment and shall not be allowed to work for less than the prevailing minimum wage, nor under substandard conditions;

(e) employers shall contact Center staff if the offender terminates or is terminated from his position, is excessively late, or leaves work early;

(f) offenders shall not borrow money nor secure an advance in salary without prior approval of Center staff;

(g) offenders shall notify employers of illness, absence or tardiness;

(h) Center staff shall contact the employer periodically to monitor the offender's performance and to verify the offender's work hours;

(i) within two weeks, employers shall send to the Center staff a signed acknowledgment of the rules and willingness to notify Center staff of any violations; and

(j) employers shall contact Center staff with any questions or concerns.

KEY: corrections, halfway houses, training**March 13, 2001****Notice of Continuation November 30, 2010****63-46a-3****64-13-10****64-13-14.5**

R251. Corrections, Administration.**R251-709. Transportation of Inmates.****R251-709-1. Authority and Purpose.**

(1) This rule is authorized under Section 64-13-10.

(2) This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

R251-709-2. Definitions.

"Restraint" means handcuffs, handcuff cover, locking devices, leg irons, waist chains or other locking and restraining devices.

"Run" means any transport of an inmate off prison property.

R251-709-3. Policy.

It is the policy of the Department that during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers or other persons.

R251-709-4. Court Transportation.

(1) Inmates shall not be allowed to visit with relatives, friends or members of the general public during transportation, while in a medical facility, courtroom, or while waiting, in transit to or from a medical facility or courtroom.

(2) Requests from attorneys to detain or temporarily relocate inmates for consultations, visits with spouse, parents, or other family members, shall be denied unless the presiding judge specifically orders the visits.

(3) Attorneys requesting consultation with inmates after a hearing may do so for five minutes in a court holding cell unless the presiding judge specifically orders otherwise.

(4) The inmate's attorney may provide civilian clothing for inmates appearing in a jury trial.

R251-709-5. Medical Security Procedures.

(1) The transportation officer shall maintain custody of the inmate at all times during medical transportation runs. Exceptions may be made when dealing with inmates of the opposite sex during compromising procedures, (i.e., pap smears, mammograms, etc.). When an exception is made, the officer shall remain immediately outside the door (if there are no windows or other escape routes in the room) or on the opposite side of the privacy curtain.

(2) The transportation officer shall remove a particular restraint upon the doctor's orders if the removal of that restraint is required to perform a medical procedure; only that particular restraint shall be removed and it shall be immediately reapplied upon completion of the medical procedure.

(3) Except in life-threatening emergencies, the transportation officer shall not assist nor participate in any medical procedure or other assistance to patients or inmates.

R251-709-6. Transporting by Air.

When transporting by air, the transportation lieutenant, captain, or chief shall contact the transporting airline prior to the transportation run to confirm their policies regarding inmate restraints, boarding and alighting policies, firearms on the aircraft, and other inmate transportation issues.

KEY: prisons, corrections, security measures

May 15, 2001

64-13-10

Notice of Continuation November 30, 2010

R277. Education, Administration.**R277-100. Rulemaking Policy.****R277-100-1. Definitions.**

A. "Board" means the Utah State Board of Education/Utah State Board for Applied Technology Education.

B. "Bulletin" means the Utah State Bulletin.

C. "Effective date" means the date on which a proposed rule becomes enforceable.

D. "Hearing" means an administrative rulemaking hearing.

E. "DAR" means the State Division of Administrative Rules.

F. "Publication date" means the date of the Bulletin in which the rule or summary of the rule is printed.

G. "Rule"

(1) means a statement made by the Board that applies to a general class of persons, rather than specific persons and:

(a) implements or interprets a statutory policy;

(b) prescribes the policy of the Board in policy consistent with Section 53A-1-401(3), U.C.A. 1953; or

(c) prescribes the administration of the Board's functions or describes its organization, procedures, and operations.

(2) does not include declaratory orders under Section 63G-4-503.

H. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

I. "USOE" means the Utah State Office of Education.

J. "USOR" means the Utah State Office of Rehabilitation.

K. "Executive Committee" means the Executive Committee of the Board.

L. "Committee" means a study committee consisting of two or more Board members appointed under rules of the Board.

R277-100-2. Authority and Purpose.

A. The Board derives its authority for making rules from Utah Constitution Article X, Section 3. This rule is authorized under Section 63G-3-101 et seq., the Utah Administrative Rulemaking Act which specifies procedures for state agencies to follow in making rules and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its authority.

B. The purpose of this rule is to conform the rulemaking procedures of the Board and divisions supervised by the Board to those required under the Utah Administrative Rulemaking Act.

R277-100-3. Initiation, Amendment, or Repeal of a Rule.

A. The Board may make, amend, or repeal rules.

(1) Rulemaking is required by the Board when:

(a) explicitly or implicitly required by statutory or federal mandate; and either

(b) Board action affects a class of persons; or

(c) Board action affects the operations of another agency, except as provided in subsection A(2)(c) of this section.

(2) Rulemaking is not required by the Board when:

(a) a procedure or standard is already described in statute;

(b) Board action affects an individual person, not a class of persons;

(c) Board action concerns only the internal management of the Board, USOR, USOE, school districts, or of entities administered by the Board, USOR, USOE, or school districts, and does not affect private persons as a class, other agencies, or other governmental entities; or

(d) grammatical or other insignificant rule changes do not affect policy or the application or results of Board decisions.

B. Public Petition

(1) Any person may petition the Board to make, amend, or repeal a rule. The petition shall contain the name and address of the person submitting the rule, a written copy of the proposal, a statement concerning the Board's legal authority to act, and the

reasons for the proposal. The petition is submitted to the Superintendent.

(2) The Superintendent reviews petitions prior to consideration by the Board. Within 30 days after receiving a petition, the Superintendent does one of the following:

(a) Notifies the petitioner by mail that the petition has been denied and gives reasons for the denial; or

(b) Notifies the petitioner by mail that the petition has been accepted, and specifies a date on which rulemaking procedures will be initiated. Changes in the petitioner's proposal suggested by the Superintendent are included in the notice.

(3) A petitioner may appeal a decision by the Superintendent by sending a signed request for consideration of the appeal, including a copy of the original proposal and copies of correspondence with the Superintendent, if any, to the Chairman of the Board. The Chairman presents the appeal to the Board. If the Board votes to review the proposal, it is scheduled for a future meeting of the Board. The decision of the Board is final.

R277-100-4. Procedures for Making, Amending, or Repealing a Rule.

A. Regular Rules

(1) Prior to submitting a proposed rule to the Board, the Superintendent shall ensure that reasonable efforts have been made to solicit information from school district officials, professional associations, and other affected parties concerning the need for, and content of, the proposed rule.

(2) Upon receiving notice of a proposed rule, the Executive Committee of the Board assigns the proposed rule to a committee or to the entire Board.

(3) If a Board committee reads a proposed rule initially, the rule shall be read a second time before the entire Board and the second reading shall include discussion of the Committee report; and

(4) After the entire Board reads a proposed rule, the Board may choose to:

(a) consider the rule again at its next meeting with revisions incorporating Board suggestions, by directing the Superintendent to change the proposed rule;

(b) receive notice of the proposed rule in its final form on the next Board agenda, by directing the Superintendent to put the rule with its effective date on the consent calendar for the Board's next meeting;

(c) allow the rule to become effective 30 days after publication in the State Bulletin if the proposed rule is not rewritten to incorporate public comments or suggestions, by directing the Superintendent to send DAR notice of an effective date for the proposed rule. The date shall be no fewer than 30 days nor more than 90 days after the publication date of the proposed rule; or

(d) direct the Superintendent to take no further action on the rule.

(5) Following the Board's approval of a proposed rule, the Board directs the Superintendent to prepare a rule analysis form and file the form and a copy of the proposed rule with DAR.

The Superintendent shall also send a copy of the proposed rule to:

(a) persons who have filed a timely request with the Superintendent;

(b) school district superintendents;

(c) persons who must be given notice by statutory or federal mandate; and

(d) other persons who, in the judgment of the Superintendent, should receive notice.

(6) The Board allows at least 30 days after publication in the Bulletin for public comment on the proposed rule.

(a) The Superintendent maintains a file containing a copy

of the proposed rule and the rule analysis form, and makes the file available to the public during the regular business hours of the USOE. Written comments, notes on verbal comments, and hearing records, if any, are kept in the file.

(b) Hearings may be held by the Board as described in Section R277-100-6.

(c) The Board may follow Subsection B or C of this section to amend a rule after reviewing public comment.

(d) During the 30-day comment period, the Board may direct the Superintendent to take no further action on a rule. The proposed rule automatically expires 90 days after its publication date.

B. Nonsubstantive Changes in a Rule

(1) Nonsubstantive changes may be made in a rule under this section both before and after the effective date of the rule.

(2) A change is nonsubstantive if, in the opinion of the Superintendent, it does not affect Board policy, application of the rule, or results of Board action under the rule.

(3) To enact a nonsubstantive change, the Superintendent prepares a copy of the new version of the rule and files it with the DAR. The new version is effective upon filing.

C. Substantive Changes in a Proposed Rule

The Board may make a change in a previously published proposed rule prior to its effective date. The Board directs the Superintendent to:

(1) prepare a new rule analysis form describing the change, and file it and a copy of the revised proposal with DAR; and

(2) notify DAR of the effective date of the revised rule. The rule will automatically become effective 30 days after its new publication date if no other date is specified.

D. Emergency Rules

(1) An emergency rule may be adopted under this section if the Superintendent finds that delay resulting from following normal procedures will:

(a) result in imminent peril to the public health, safety or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements; or

(c) place the Board in violation of federal or state law.

(2) The Superintendent notifies the Board Chairman of the need to enact an emergency rule.

(3) If the Board Chairman concurs in the recommendation, the Superintendent:

(a) prepares and files a copy of the proposed emergency rule and the rule analysis form with DAR, stating specific reasons for the adoption of the rule;

(b) notifies DAR of the effective date and the lapsing date for the proposed emergency rule. If no effective date is specified, the proposed emergency rule becomes effective on the filing date. If no lapsing date is specified, the proposed emergency rule lapses 120 days after the filing date. No emergency rule may remain in effect for more than 120 days; and

(c) mails a copy of the rule analysis form to the members of the Board and to persons specified in subsection A(5) of this section.

R277-100-5. Formal Adoption by the Board of Procedures, Handbooks, and Manuals, and Reference to those Documents in Rules.

A. Under Board direction, divisions under the supervision of the Board, periodically develop or amend various policy manuals or policy handbooks which may not necessarily qualify to be rules or are not suitable for the normal rulemaking procedures. These shall be presented to the Board for purposes of formal adoption or amendment.

B. Districts shall be promptly notified of such documents which are to be considered for adoption by the Board.

C. Local school boards and school districts shall comply with the provisions of such documents, after the formal adoption or amendment by the Board of a USOE policy manual or policy handbook.

D. Following formal review by the Board, the Board's designation of a handbook, manual, or similar document as a policy manual or policy handbook is conclusive for purposes of this rule.

R277-100-6. Hearings.

A. When to hold hearings

(1) The Board may hold hearings during a regular or special meeting.

(2) The Board shall hold hearings if:

(a) required by state or federal law; or

(b) an affected agency, ten persons, or an organization having not fewer than ten members submits a written request for a hearing to the Superintendent not more than 15 days after the publication date of the proposed rule, amendment, or rule repeal. The hearing shall be held within 30 days of receipt of the request.

B. Hearing Procedures

(1) Notice of hearing regarding proposed rules published in the Bulletin is provided by:

(a) publication of the hearing date, time, place, and subject matter in the Bulletin;

(b) posting of the notice of information contained on the rule analysis form in a place in the USOE frequented by the public;

(c) sending persons who receive rule analysis forms under section R277-100-4A(5) written notice of any changes made in the notice information contained on the rule analysis form;

(d) giving further notice required by law or regulation; and

(e) sending notice to those requesting the hearing, if the hearing is requested under section R277-100-6A(2)(b).

(2) Notice of hearings held prior to proposing the rule is given by:

(a) posting the hearing date, time, place, and subject in a place in the USOE frequented by the public;

(b) notifying a local media correspondent; and

(c) mailing the notice information to persons specified in section R277-100-4A(2).

C. The Board may hold the hearing itself, or appoint any person who can fairly conduct the hearing, other than the Superintendent, to be the hearing officer. The hearing officer shall know rulemaking procedures, but may not be directly responsible for administering the rule.

D. Conducting the Hearing

(1) Upon opening the hearing, the hearing officer explains the purpose of the hearing and invites orderly, germane comment for a minimum of one hour. The hearing officer may set time limits for speakers and otherwise control prudent use of time.

(2) The hearing officer rules on questions of relevance and redundancy. Oaths, cross-examination, and rules of evidence are not required. The hearing is conducted as an open, informal, orderly, and informative meeting.

(3) A person familiar with the rule at issue may be asked to be present at the hearing to respond to inquiries and to provide information.

(4) The hearing officer invites written comment to be submitted at the hearing or within a reasonable time thereafter. Written comments shall include the name, address, and, if applicable, the organization represented by the person making the comments. Written comment is appended to the hearing minutes.

E. The Record

(1) The hearing officer or a person appointed to take minutes records the name, address, and organization represented

by each person speaking at the hearing, and a brief summary of the remarks.

(2) Hearing minutes, a copy of the proposed rule, written comments, the findings and recommendations of the hearing officer, the decision of the Board, and other pertinent documents constitute the record of the hearing. The record is maintained in a file available to the public at the USOE during regular business hours.

F. Findings and Recommendations

(1) The hearing officer makes written findings and recommendations, including any facts pertinent to the hearing, recommendations for Board action, and reasons for the recommendations.

(2) The hearing officer transmits the findings, recommendations, and the complete record of the hearing to the Board as soon as possible following the close of the hearing.

(3) When the Board conducts the hearing, the Chairman prepares written findings, the decision, and reasons for the decision.

G. The Decision

(1) The Board issues a written decision as soon as possible after the close of the hearing and before the rule becomes effective. The decision states whether the proposed rule will be adopted, changed, or withdrawn; any alternative action such as whether a rule will be proposed on the subject matter of the hearing; and reasons for the decision. The written decision is included in the hearing record.

(2) If the hearing is held under subsection A(2) of this section, the Board mails a copy of the decision to the person who requested the hearing.

H. A decision of the Board may be appealed to a district court.

R277-100-7. Board Review of Rules.

A. Five Year Review

(1) The Board reviews each rule within five years of its effective date and at five year intervals thereafter.

(2) The Superintendent shall coordinate with DAR to ensure that all Administrative rules are adequately reviewed by the Board prior to the five year review deadline.

(3) All other paperwork shall be completed by the Superintendent to repeal or reenact the rules.

B. Declaratory Judgments on the Applicability of a Rule

(1) An interested person may petition the Board for a ruling on the applicability of a particular Board provision, rule, or order in a stated case by filing a petition for a declaratory judgment with the Superintendent.

(2) The petition shall contain the petitioner's name, address, and phone number; the Board provision, rule, or order; and a statement of the facts of the case. The petition shall be filed within six months of the application of the rule to the interested party or to a person represented by the interested party.

(3) Within 15 days of the filing of the petition, the Superintendent makes a recommendation to the Board regarding the applicability of the provision, rule, or order to the case.

(4) Prior to issuing a decision, the Board may:

(a) conduct a hearing on the matter under Section R277-100-6. The hearing shall begin no sooner than 15 days and no later than 45 days after receiving the petition; or

(b) appoint a staff member to conduct an investigation of the case. The investigator makes a recommendation to the Board as soon as possible after the close of the investigation.

(5) The Board notifies the petitioner by certified mail of its decision to conduct a hearing or investigation. Notice includes the time, date, and place of the hearing and the name of the hearing officer; or, in the case of an investigation, the name of the staff member responsible for conducting the investigation.

(6) The Board issues a ruling regarding the applicability of

the provision, rule, or order within 60 days of the filing of the petition, or if a hearing is held, as soon as possible after the close of a hearing. The Board's ruling includes reasons for the decision and is sent by certified mail to the petitioner.

R277-100-8. Miscellaneous.

A. The Superintendent maintains a complete copy of the Board's current rules for public inspection at the Superintendent's Office during regular business hours.

B. An applicable federal or professionally recognized uniform code rule may be incorporated by reference into Board rules if the Board:

(1) includes both the federal or uniform rule in the rule;

(2) states specifically in its rules which federal and uniform rules are incorporated by reference, and any Board deviation from them; and

(3) maintains for public inspection at the USOE, USOR and DAR complete and current copies of federal and uniform rules incorporated by reference.

C. Deadlines for publication in the Bulletin are the first day of the month for the Bulletin issued on the fifteenth and the fifteenth day of the month for the first issue of the next month.

D. If any provision of this policy conflicts with an applicable provision of the Utah Administrative Rulemaking Act or a corresponding DAR regulation, the act or regulation controls.

R277-100-9. Rules Not Requiring Board Action.

A. Rules authorized or required of the USOE or USOR by previous Board action, or by state or federal law or regulation, may be adopted by the USOE or USOR without Board action. Procedures for USOE rulemaking are set forth in the Administrative Rulemaking Act, Chapter 46a of Title 63, Utah Code Annotated 1953, and applicable regulations promulgated by the DAR. The procedures are essentially the same as the foregoing for Board adoptions, with the following substitutions:

(1) for "Board," read "USOE", "USOR", "Executive Director", or "Superintendent" as appropriate.

(2) for "Superintendent," read "Executive Director" or "Associate Superintendent who administers the affected program."

B. Notice concerning rules to be adopted under this section shall be given to the Board within 30 days after commencement of rulemaking.

**KEY: administrative procedures, rules and procedures
1990 Art X Sec 3
Notice of Continuation November 10, 2010G-3-101 et seq.
53A-1-401(3)**

R277. Education, Administration.**R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.****R277-477-1. Definitions.**

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Most critical academic needs" for purposes of this rule means needs identified in the school improvement plan developed in accordance with Section 53A-1a-108.5.

C. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

D. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

E. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

F. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

G. "School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust Program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

M. "USOE" means the Utah State Office of Education.

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the

expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for review and monitoring of funds and revenue generated by school trust lands; and

(4) determine the time and manner in which the student count shall be made for allocation of the monies as provided in Section 53A-16-101.5(3)(c).

R277-477-3. Distribution of Funds -- Determination of Proportionate Share.

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

- (1) School Improvement Plan;
- (2) School LAND Trust Program;
- (3) Reading Achievement Plan (for elementary schools)
- (4) Professional Development Plan;
- (5) Child Access Routing Plan; and
- (6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil base amount as the school's base allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. Income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools after the close of the state fiscal year as the USOE receives the funds in the Interest and Dividends Account within the Uniform School Fund.

L. Local boards of education or the SCSB shall approve plans annually and shall ensure timely distribution of the funds to schools with approved plans.

M. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

N. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-third of the school's allocation in the school plan or report.

O. School LAND Trust Program funds shall be focused on the school's most critical academic needs.

P. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified most critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

Q. Examples of successful programs using School LAND Trust Program monies include activities such as:

- (1) credit recovery courses and programs;
- (2) study skills classes;
- (3) college entrance exam preparation classes;
- (4) academic field trips;
- (5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;
- (6) teachers and teacher aides;
- (7) professional development directly tied to school academic goals;
- (8) computer labs, software, LCDs, smart boards;
- (9) books and textbooks.

R. Examples of programs not eligible for funding using School LAND Trust Program monies include plans to improve school climate, provide security, address behavioral issues, prevent bullying, install permanent auditorium audio systems, and initiate or support other non-academic school needs.

S. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

T. The School Children's Trust Section of the USOE shall create and electronically post model plans for elementary and secondary schools.

U. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477, or inconsistent with the original school board/charter board approval shall be withheld by the USOE in subsequent years until the misappropriated funds have been restored.

V. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

W. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-9D, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

X. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

R277-477-4. Administration of School LAND Trust Program.

A. The School Children's Trust Section of the USOE shall provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. Support services shall include:

(1) Regional training and, to the extent of resources available, school district or school training for school community councils, as requested by local boards of education or the SCSB;

(2) Training materials;

(3) Model plans for school improvement, reading achievement, School LAND Trust, professional development assistance, and child access routing plans for both elementary and secondary schools.

(4) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

C. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

D. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

E. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective paper audits of School LAND Trust expenditures and the execution of School LAND Trust plans.

F. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

(1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;

(2) providing information to other state agencies, general public, and the Legislature regarding school trust lands and revenues;

(3) reviewing and providing information as representatives of the Superintendent to boards, state agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;

(4) increase and strengthen beneficiary monitoring; and

(5) other activities or assignments as directed by the

Superintendent.

R277-477-5. Information to USOE.

A. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

KEY: schools, trust lands funds

August 7, 2009

**Art X Sec 3
Notice of Continuation November 10, 2010 53A-16-101.5(3)(c)**

53A-1-401(3)

R277. Education, Administration.**R277-503. Licensing Routes.****R277-503-1. Definitions.**

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

B. "Board" means the Utah State Board of Education.

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

M. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that go beyond an educator's content knowledge of an academic discipline.

N. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following

organizations:

(1) Middle States Commission on Higher Education;

(2) New England Association of Schools and Colleges;

(3) North Central Association Commission on Accreditation and School Improvement;

(4) Northwest Accreditation Commission;

(5) Southern Association of Colleges and Schools; and

(6) Western Association of Schools and colleges: Senior College Commission.

O. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings.

P. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R. "USOE" means the Utah State Office of Education.

R277-503-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall:

(1) have completed an approved college/university teacher preparation program,

(2) have been recommended for licensing, and

(3) have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area after March 3, 2007 shall submit passing score(s) on a rigorous Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

D. For each endorsement in an NCLB core academic area

to be posted on the license, secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available.

E. An applicant shall submit electronic or original documentation of passing score(s) on a rigorous Board-designated content test to the USOE.

F. A licensure candidate that has completed a Utah university/college teacher preparation program prior to January 1, 2011 who submits a score below the final Utah state passing score on the test designated in R277-503-3C shall be issued a nonrenewable conditional Level 1 license. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's designated renewal date.

G. Any licensure candidate, except those described in R277-503-3F, recommended for a Utah Level 1 license after January 1, 2011 who does not submit a passing score on the test designated in R277-503-3C shall not be eligible for licensure until achieving a passing score.

R277-503-4. Licensure Routes.

Applicants who seek Utah educator licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

- (a) NCATE; or
- (b) TEAC; and

(2) As of January 1, 2012, approved by USOE to recommend for licensure in the license area or endorsements or both in designated areas.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on a Board-designated content test to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on a Board-designated content test, where available, to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensure by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s) and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) An applicant who has been employed as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(i) The applicant has had at least three years of paraeducator experience;

(ii) The applicant's experience has been successful based on documentation from the school/school district; and

(iii) The USOE has approved the applicant's experience in lieu of pedagogy course(s).

(f) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(g) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from an institution of higher education or the USOE in the monitoring and assessment.

(h) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(i) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(j) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district/charter school employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district/charter school, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district/charter school shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district/charter school shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district/charter school shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district/charter school may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained

mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific license to fill a position in the school district/charter school. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing school district/charter school shall request a school district/charter school specific license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific license from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, or results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific license from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

(11) If an individual holds a Utah license, the application shall be subject to additional USOE review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the school district/charter school specific license.

(12) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting district/charter school. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist. The USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE. The university or school district shall be responsible for final review and recommendation. The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

R277-503-6. Additional Provisions.

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE and TEAC.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

KEY: teachers, alternative licensing

November 8, 2010

Notice of Continuation March 29, 2007

Art X Sec 3

53A-1-402(1)(a)

53A-1-401(3)

R277. Education, Administration.**R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools.****R277-611-1. Definitions.**

A. "Certified volunteer" means an individual who volunteers to teach school district employees or students in the public schools about firearm safety. The individual shall provide documentation of training from designated training entities prior to providing firearm safety instruction to public school students or employees on public school property.

B. "Public school classrooms or auditoriums" means any classroom or auditorium in a public school identified as available and appropriate and designated by the school superintendent as available for firearm safety instruction.

C. "Firearm safety education classes" means classes or courses taught by designated individuals during the regular school day or outside of the regular school day as determined by the local board of education.

D. "LEA" means a school district, school or charter school.

R277-611-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-13-106(5) which directs the Board to make rules specific to limited areas of firearm safety instruction in the public schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide a definition of certified volunteer for purposes of providing firearm safety training in the public schools; to direct school districts and charter schools to designate a process for designated public school areas that may be used for firearm safety training for adults or students or both; and to direct a local board to have a process or committee or both for review of materials that may be used under the school district's or charter school's authority to teach firearm safety; and to provide for voluntary firearm safety training of public school district employees or school community members or both on public school property at times determined by the local board of education.

R277-611-3. Certified Volunteers and Proof of Certification of Instructors.

A. A school district or charter school may allow volunteers who have been certified by the Utah Bureau of Criminal Identification to teach firearm safety on public school property consistent with district policy and direction. A list of certified firearms instructors by county is available through the Utah Department of Public Safety.

B. Volunteers shall provide documentation of required training to the designated school administrator prior to the advertisement or notice of available training.

C. Any individual that provides or participates in training to public school age children on public school property shall have completed a fingerprint background check consistent with Section 53A-3-410 and have had the background check reviewed by appropriate school district administrators prior to instructing public school age students. A volunteer or instructor shall not be considered certified under Section 53A-13-106(5)(d) by the school district until the background check process is completed.

R277-611-4. School District Review of Firearm Safety Materials Used in Public Schools.

A. Volunteer firearm safety instructors who have been approved to provide instruction to public school-age students or public school employees shall submit materials they propose to

use in their instruction or training for review by the local LEA board prior to the training.

B. The LEA shall have adequate time to review the submitted materials and shall approve or disapprove the materials in a timely manner.

C. An LEA shall use standards for review of materials that include:

(1) Age-appropriateness of materials for the LEA's audience;

(2) Neither a bias against firearms nor a bias in favor of firearms;

(3) The selection and approval of materials that would not personally enrich or benefit the volunteer instructor;

(4) Other reasonable and objective standards that apply to the review of similar instructional materials.

R277-611-5. Voluntary Training of Adults and Public Education Employees on Public School Property.

A. An LEA may allow community groups to use public school property for voluntary firearm safety training for public school employees or interested community members.

B. Community groups shall be allowed to use public school property for voluntary firearm safety training under conditions used to approve public school buildings for non-curriculum uses.

C. Availability of space and the safety of school age children and school employees shall be given the greatest consideration in the approval of requests for use of public education property for voluntary firearm safety training and instruction.

R277-611-6. Use of Public School Property for Firearm Safety Instruction.

A. LEAs may designate which classrooms or auditoriums or other appropriate public school areas may be used for firearm safety training or instruction or both.

B. LEAs shall give first priority to curriculum-related groups in allowing firearm safety instruction to be held on public school property.

C. LEAs shall give the safety of all students and community patrons the greatest consideration in allowing for firearm safety instruction or training on public school property.

D. If appropriate or necessary, at the LEA's discretion, the LEA may post notice in and around public school areas that are designated for firearm instruction and training.

E. Live ammunition shall not be brought on public school property as a part of firearm safety instruction.

**KEY: firearms, instruction
November 8, 2010**

**Art X, Sec 3
53A-13-106(5)
53A-1-401(3)**

R277. Education, Administration.**R277-616. Education for Homeless and Emancipated Students and State Funding for Homeless and Disadvantaged Minority Students.****R277-616-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Domicile" means the place which a person considers to be the permanent home, even though temporarily residing elsewhere.

C. "Economically disadvantaged" means a student who is eligible for reduced price or free school lunch.

D. "Emancipated minor" means:

(1) a child under the age of 18 who has become emancipated through marriage or by order of a court consistent with Section 78A-6-801 et seq.; or

(2) a child recommended for school enrollment as an emancipated or independent or homeless child/youth by an authorized representative of the Utah State Department of Social Services.

E. "Enrolled" for purposes of this rule means a student has the opportunity to attend classes and participate fully in school and extracurricular activities based on academic and citizenship requirements of all students.

F. "Ethnic minority student" means a student identified as belonging to one or more of the categories below:

(1) American Indian or Alaskan native;

(2) Hispanic/Latino;

(3) Asian;

(4) Pacific Islander;

(5) Black/African American;

(6) The total of ethnic minority students per school shall be determined annually on October 1.

G. "Homeless child/youth" means a child who:

(1) lacks a fixed, regular, and adequate nighttime residence;

(2) has primary nighttime residence in a homeless shelter, welfare hotel, motel, congregate shelter, domestic violence shelter, car, abandoned building, bus or train station, trailer park, or camping ground;

(3) sleeps in a public or private place not ordinarily used as a regular sleeping accommodation for human beings;

(4) is, due to loss of housing or economic hardship, or a similar reason, living with relatives or friends usually on a temporary or emergency basis due to lack of housing; or

(5) is a runaway, a child or youth denied housing by his family, or school-age unwed mother living in a home for unwed mothers, who has no other housing available.

H. "Parent" means a parent or guardian having legal custody of a minor child.

I. "School district of residence for a homeless child/youth" means the school district in which the student or the student's legal guardian or both currently resides or the charter school that the student is attending for the period that the student or student's family satisfies the homeless criteria.

J. "USOE" means the Utah State Office of Education.

R277-616-2. Authority and Purpose.

A. This rule is authorized under Article X, Section 3 of the Utah State Constitution, Section 53A-17a-121(2) which directs the Board to develop rules for school districts and charter schools to spend monies for homeless and ethnic minority students, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-11-101 which requires that minors between the ages of 6 and 18 attend school during the school year of the school district of residence, Section 53A-2-201(5) which makes each school district or charter school responsible for providing educational services for all children of school age who reside in the school district or attend the school, and the McKinney-Vento Homeless

Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435.

B. The purpose of this rule is to ensure that homeless children/youth have the opportunity to attend school with as little disruption as reasonably possible and that funds for homeless and economically disadvantaged ethnic minority students are distributed equitably and efficiently to school districts and charter schools.

R277-616-3. Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School.

A. Under the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435, homeless students are entitled to immediate enrollment and full participation even if they are unable to produce records which may include medical records, birth certificates, school records, or proof of residency normally required for enrollment.

B. A homeless student shall:

(1) be immediately enrolled even if the student does not have documentation required under Sections 53A-11-201, 301, 302, 302.5 and Section 53A-2-201 through 213;

(2) be allowed to continue to attend his school of origin, to the extent feasible, unless it is against the parent/guardian's wishes; be permitted to remain in the student's school of origin for the duration of the homelessness and until the end of any academic year in which the student moves into permanent housing; or

(3) transfer to the school district of residence or charter school if space is available as defined under Subsection R277-616-11.

B. Determination of residence or domicile may include consideration of the following criteria:

(1) the place, however temporary, where the child actually sleeps;

(2) the place where an emancipated minor or an unaccompanied child/youth or accompanied child's/youth's family keeps its belongings;

(3) the place which an emancipated minor or an unaccompanied child/youth or accompanied child's/youth's parent considers to be home; or

(4) such recommendations concerning a child's domicile as made by the State Department of Human Services.

C. Determination of residence or domicile may not be based upon:

(1) rent or lease receipts for an apartment or home;

(2) the existence or absence of a permanent address; or

(3) a required length of residence in a given location.

D. If there is a dispute as to residence or the status of an emancipated minor or an unaccompanied child/youth, the issue may be referred to the USOE for resolution.

E. The purpose of federal homeless education legislation is to ensure that a child's education is not needlessly disrupted because of homelessness. If a child's residence or eligibility is in question, the child shall be admitted to school until the issue is resolved.

R277-616-4. Transfer of Guardianship.

A. If guardianship of a minor child is awarded to a resident of a school district by action of a court or through appointment by a school district under Section 53A-2-202, the child becomes a resident of the school district in which the guardian resides.

B. If a child's residence has been established by transfer of legal guardianship, no tuition may be charged by the new school district of residence.

R277-616-5. School District Funding for Homeless Students and Economically Disadvantaged Ethnic Minority Students.

A. Funds appropriated for homeless and economically disadvantaged ethnic minority students shall be distributed as outlined under 53A-17a-121(3).

B. For purposes of determining the homeless student count, a school district or a charter school shall count annually the number of homeless students served in the school district or charter school.

C. If a student satisfies the homeless criteria at more than one time during the school year in the same school district or charter school, the student shall be counted once by the school district or charter school.

KEY: compulsory education, students' rights

August 9, 2010

Notice of Continuation November 10, 2010

Art X Sec 3

53A-1-401(3)

53A-2-201(5)

53A-2-202

53A-17a-121(3)

R277. Education, Administration.**R277-700. The Elementary and Secondary School Core Curriculum.****R277-700-1. Definitions.**

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Accreditation Commission or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

B. "Applied courses" means public school courses or classes that apply the concepts of Core subjects. Courses may be offered through Career and Technical Education or other areas of the curriculum.

C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.

D. "Board" means the Utah State Board of Education.

E. "Career and Technical Education (CTE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

F. "Core Curriculum content standard" means a broad statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

G. "Core Curriculum criterion-referenced test (CRTs)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

H. "Core Curriculum objective" means a focused description of what students enrolled in public schools are expected to know and do at the completion of instruction.

I. "Core subjects" means courses for which there is a declared set of Core curriculum objectives as approved by the Board.

J. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

K. "Elementary school" for purposes of this rule means grades K-6 in whatever kind of school the grade levels exist.

L. "High school" for purposes of this rule means grades 9-12 in whatever kind of school the grade levels exist.

M. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

N. "Life Skills document" means a companion document to the Core curriculum that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

O. "Middle school" for purposes of this rule means grades 7-8 in whatever kind of school the grade levels exist.

P. "SEOP" means student education occupation plan. An SEOP shall include:

- (1) a student's education occupation plans (grades 7-12) including job placement when appropriate;
- (2) all Board and local board graduation requirements;
- (3) evidence of parent, student, and school representative involvement annually;
- (4) attainment of approved workplace skill competencies; and

(5) identification of post secondary goals and approved sequence of courses.

Q. "State Core Curriculum (Core Curriculum)" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

R. "Supplemental courses" means public school courses that provide students with the skills to succeed in Core subject areas.

S. "USOE" means the Utah State Office of Education.

T. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include, at a minimum, components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to school or district graduation requirements prior to receiving a basic high school diploma unless exempted consistent with Section 53A-1-603(5) and R277-705-11.

R277-700-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Section 53A-1-402.6 which directs the Board to establish a Core Curriculum in consultation with local boards and superintendents and directs local boards to design local programs to help students master the Core Curriculum; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the minimum Core Curriculum requirements for the public schools, to give directions to local boards and school districts about providing the Core Curriculum for the benefit of students, and to establish responsibility for mastery of Core Curriculum requirements.

R277-700-3. Core Curriculum Standards and Objectives.

A. The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as the Core Curriculum.

B. Course descriptions for required and elective courses shall be developed cooperatively by school districts and the USOE with opportunity for public and parental participation in the development process.

C. The descriptions shall contain mastery criteria for the courses, shall stress mastery of the course material and Core objectives, standards and life skills consistent with the Core Curriculum and Life Skills document. Mastery shall be stressed rather than completion of predetermined time allotments for courses.

D. Implementation of the Core Curriculum and student assessment procedures are the responsibility of local boards of education consistent with state law.

E. This rule shall apply to students in the 2007-2008 graduating class.

R277-700-4. Elementary Education Requirements.

A. The Board shall establish a Core Curriculum for elementary schools, grades K-6.

B. Elementary School Education Core Curriculum Content Area Requirements:

- (1) Grades K-2:
 - (a) Reading/Language Arts;
 - (b) Mathematics;
 - (c) Integrated Curriculum.
- (2) Grades 3-6:
 - (a) Reading/Language Arts;
 - (b) Mathematics;

- (c) Science;
- (d) Social Studies;
- (e) Arts:
 - (i) Visual Arts;
 - (ii) Music;
 - (iii) Dance;
 - (iv) Theatre.
- (f) Health Education;
- (g) Physical Education;
- (h) Educational Technology;
- (i) Library Media.

C. It is the responsibility of the local boards of education to provide access to the Core Curriculum to all students.

D. Student mastery of the general Core Curriculum is the responsibility of local boards of education.

E. Informal assessment should occur on a regular basis to ensure continual student progress.

F. Board-approved CRT's shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics;
- (4) science in elementary grades 4-6; and
- (5) effectiveness of written expression in grade 6.

G. Provision for remediation for all elementary students who do not achieve mastery is the responsibility of local boards of education.

R277-700-5. Middle School Education Requirements.

A. The Board shall establish a Core Curriculum for middle school education.

B. Students in grades 7-8 shall earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.

C. Local boards may require additional units of credit.

D. Grades 7-8 Core Curriculum Requirements and units of credit:

- (1) Language Arts (2.0 units of credit);
- (2) Mathematics (2.0 units of credit);
- (3) Science (1.5 units of credit);
- (4) Social Studies (1.5 units of credit);
- (5) The Arts (1.0 units of credit):
 - (a) Visual Arts;
 - (b) Music;
 - (c) Dance;
 - (d) Theatre.
- (6) Physical Education (1.0 units of credit);
- (7) Health Education (0.5 units of credit);
- (8) Career and Technical Education, Life, and Careers (1.0 units of credit).

E. Best practices, technology and other instructional media shall be used in middle school curricula to increase the relevance and quality of instruction.

F. Board-approved CRT's shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics; and
- (4) science in grades 7 and 8.

R277-700-6. High School Requirements.

A. The Board shall establish a Core Curriculum for students in grades 9-12.

B. Students in grades 9-12 shall earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

C. Grades 9-12 Core Curriculum credits from courses approved by the Board, as specified:

- (1) Language Arts (4.0 units of credit):
 - (a) Ninth grade level (1.0 unit of credit);

- (b) Tenth grade level (1.0 unit of credit);

- (c) Eleventh grade level (1.0 unit of credit); and

- (d) Twelfth grade level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's SEOP:

- (i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills; and

- (ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts; and

- (iii) courses apply the fundamental concepts and skills of language arts; and

- (iv) courses provide developmentally appropriate content; and

- (v) courses develop skills in reading, writing, listening, speaking, and presentation;

- (2) Mathematics (3.0 units of credit) met minimally through successful completion of the foundation courses, Algebra 1, Geometry, Algebra 2.

- (a) Students may opt out of Algebra 2 with written parent/legal guardian request. If an opt out is requested, the third math credit shall come from the advanced and applied courses on the Board-approved mathematics list.

- (b) If credit for a foundation course is earned before ninth grade, the student shall still earn 3.0 units of credit by taking other courses from the foundation, advanced and applied Board-approved mathematics list consistent with the student's SEOP and the following criteria:

- (i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills; and

- (ii) courses provide instruction that leads to student understanding of the nature and disposition of mathematics; and

- (iii) courses apply the fundamental concepts and skills of mathematics; and

- (iv) courses provide developmentally appropriate content; and

- (v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

- (c) Students should consider taking additional credits during their senior year that align with their postsecondary career or college expectations. Students who desire a four year college degree in a science, technology, engineering or mathematics (STEM) career area should take a calculus course.

- (3) Science (3.0 units of credit):

- (a) at a minimum, two courses from the four science foundation areas:

- (i) Earth Systems Science (1.0 units of credit);

- (ii) Biological Science (1.0 units of credit);

- (iii) Chemistry (1.0 units of credit);

- (iv) Physics (1.0 units of credit); and

- (b) one additional unit of credit from the foundation courses or the applied or advanced science list determined by the local board and approved by Board using the following criteria and consistent with the student's SEOP:

- (i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills; and

- (ii) courses provide instruction that leads to student understanding of the nature and disposition of science; and

- (iii) courses apply the fundamental concepts and skills of science; and

- (iv) courses provide developmentally appropriate content; and

- (v) courses include the areas of physical, natural, or applied sciences; and

- (vi) courses develop students' skills in scientific inquiry.
- (4) Social Studies (3.0 units of credit):
- Geography for Life (0.5 units of credit);
 - World Civilizations (0.5 units of credit);
 - U.S. History (1.0 units of credit);
 - U.S. Government and Citizenship (0.5 units of credit);
 - General Financial Literacy (0.5 units of credit).
- (5) The Arts (1.5 units of credit from any of the following performance areas):
- Visual Arts;
 - Music;
 - Dance;
 - Theatre;
 - Physical and Health Education (2.0 units of credit):
 - Health (0.5 units of credit);
 - Participation Skills (0.5 units of credit);
 - Fitness for Life (0.5 units of credit);
 - Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).
- (7) Career and Technical Education (1.0 units of credit):
- Agriculture;
 - Business;
 - Family and Consumer Sciences;
 - Health Science and Technology;
 - Information Technology;
 - Marketing;
 - Technology and Engineering Education;
 - Trade and Technical Education.
- (8) Educational Technology (0.5 units of credit):
- Computer Technology (0.5 units of credit for the class by this specific name only); or
 - successful completion of Board-approved competency examination (credit may be awarded at the discretion of the school or school district).
- (9) Library Media Skills (integrated into the subject areas).
- (10) Electives (6.0 units of local board-approved credit).
- D. Board-approved CRT's shall be used to assess student mastery of the following subjects:
- reading;
 - language arts through grade 11;
 - mathematics as defined under R277-700-7C(2);
 - science as defined under R277-700-7C(3); and
 - effectiveness of written expression in grade 9.
- E. Local boards may require students to earn credits for graduation that exceed minimum Board requirements.
- F. Elective courses offerings shall be established and offered at the discretion of the local board.
- G. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications, substitutions or exemptions made to accommodate a student with disabilities.
- H. The Board and USOE may review local boards' lists of approved courses for compliance with this rule.
- I. Graduation requirements may be modified for individual students to achieve an appropriate route to student success when such modifications:
- are consistent with the student's IEP or SEOP or both;
 - are maintained in the student's file and include the parent's/guardian's signature; and
 - maintain the integrity and rigor expected for high school graduation, as determined by the Board.

R277-700-8. Student Mastery and Assessment of Core Curriculum Standards and Objectives.

A. Student mastery of the Core Curriculum at all levels is the responsibility of local boards of education.

B. Provisions for remediation of secondary students who do not achieve mastery is the responsibility of local boards of education under Section 53A-13-104.

C. Students who are found to be deficient in basic skills through U-PASS shall receive remedial assistance according to provisions of Section 53A-1-606(1).

D. If parents object to portions of courses or courses in their entirety under provisions of law (Section 53A-13-101.2) and rule (R277-105), students and parents shall be responsible for the mastery of Core objectives to the satisfaction of the school prior to promotion to the next course or grade level.

E. Students with Disabilities:

(1) All students with disabilities served by special education programs shall demonstrate mastery of the Core Curriculum.

(2) If a student's disabling condition precludes the successful demonstration of mastery, the student's IEP team, on a case-by-case basis, may provide accommodations for or modify the mastery demonstration to accommodate the student's disability.

F. Students may demonstrate competency to satisfy course requirements consistent with R277-705-3.

G. All Utah public school students shall participate in state-mandated assessments, as required by law unless specifically exempted consistent with R277-705-11.

H. Utah public school students shall participate in the Utah Basic Skills Competency Test, as defined under R277-700-1U unless specifically exempted consistent with R277-705-11.

I. School and school districts are ultimately responsible for and shall submit all required student assessments irrespective of allegations of intentional or unintentional violations of testing security or protocol.

**KEY: curricula
November 8, 2010**

Notice of Continuation January 8, 2008 **Art X Sec 3
53A-1-402(1)(b)
53A-1-402.6
53A-1-401(3)**

R277. Education, Administration.**R277-711. Educational Programs for Gifted and Talented Students.****R277-711-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Gifted and talented students" means children and youth whose superior performance or potential for accomplishment requires a differentiated and challenging education program to meet their needs in any one or more of the following areas:

(1) general intellectual: students who demonstrate a high aptitude for abstract reasoning and conceptualization, who master skills and concepts quickly, and who are exceptionally alert and observant;

(2) specific academic: students who evidence extraordinary learning ability in one or more specific disciplines;

(3) visual and performing arts: students who are consistently superior in the development of a product or performance in any of the visual and performing arts;

(4) leadership: students who emerge as leaders, and who demonstrate high ability to accomplish group goals by working with and through others;

(5) creative, critical or productive thinking: students who are highly insightful, imaginative, and innovative, and who consistently assimilate and synthesize seemingly unrelated information to create new and novel solutions for conventional tasks.

C. "Accelerated" means enabling students to move through academic programs based on their performance level.

D. "Enrichment" means classes or programs that provide greater depth and breadth of experiences and information than students would receive in traditional classes.

E. "Accelerated learning programs" means programs for: gifted and talented students, concurrent enrollment students, and students enrolled in the College Board Advanced Placement Program.

F. "Programs for gifted and talented students" means differentiated and challenging educational programs designed to meet the needs of gifted and talented students in one or more areas identified in Section 1(B).

R277-711-2. 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-17a-120 which directs the Board to adopt rules for the expenditure of funds appropriated for accelerated learning programs, Section 53A-1-402(1) which authorizes the Board to adopt rules for special programs and Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for using a portion of accelerated learning program funds to develop programs and services for gifted and talented students.

R277-711-3. Program Standards.

A. Appropriately qualified people shall direct and implement the district's program(s) for gifted and talented students.

B. Each district shall have a process for identifying students in one or more of the areas listed in Section 1(B) based upon at least three assessment instruments. These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse, handicapped and underachieving students.

C. Each school district shall have a process for appropriately placing students identified as gifted and talented.

D. Each school district shall develop and submit, to the

Utah State Office of Education for review annually, a plan for educating gifted and talented students. This plan shall reflect a time frame appropriate to the district. The district plan shall contain provisions to:

(1) develop a written philosophy for the education of gifted and talented students that is consistent with the goals and values of the school district and the community;

(2) select a district coordinator who is responsible for the program;

(3) recognize a variety of areas in which a student may be identified as gifted;

(4) provide carefully integrated, and articulated curricula throughout the district;

(5) identify and use teaching strategies that are appropriate to the learning styles and emotional needs of gifted and talented students;

(6) adopt flexible pacing at all levels and allow students to advance as they master content and skills;

(7) offer program options that reach through and beyond the normal institutional boundaries: across disciplines, across grade levels, and across levels of intelligence;

(8) provide guidance to assist students in addressing personal and interpersonal needs, in program selection and in career and college choices;

(9) balance acceleration with enrichment activities for diverse types and degrees of intelligence;

(10) provide information regarding special services, programs, and other appropriate educational opportunities; and

(11) utilize appropriate community and private resources.

E. Provisions shall be made in the district plan for staff development and support.

F. Each district shall evaluate its program to assure accountability, assess the success of individual program elements, and determine student growth and achievement.

R277-711-4. Fiscal Standards.

A. Each school district shall receive its share of funds in the proportion that the district's number of weighted pupil units for kindergarten through grade twelve and necessarily existent small schools bears to the state total.

B. Funds shall be used in any of the following areas:

(1) planning, program development, and identification of students;

(2) salaries, in-service education costs, and the costs of conferences, workshops, and other educational activities designed to enable teachers to better serve gifted and talented students;

(3) supplies, materials, and equipment to supplement and enhance the education programs for gifted and talented students.

C. Funds allocated for programs for gifted and talented students shall not be used for Concurrent Enrollment programs.

D. The Utah State Office of Education shall have fiscal and pupil accounting procedures to assess programs for gifted and talented students.

**KEY: gifted children, accelerated learning*
1990**

Notice of Continuation November 10, 2010

53A-1-402(1)

53A-1-401(3)

53A-17a-120

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The executive secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The executive secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the executive secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part

of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the executive secretary determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the executive secretary may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The executive secretary will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the executive secretary, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the executive secretary for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the executive secretary.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the executive secretary will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A ten-day public comment period will be established.

(ii) The public comment period in (i) above will be increased to 30 days for any source that is:

(A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,

(B) subject to the requirements of R307-406, Visibility,

(C) subject to the requirements of R307-415, Operating Permit Requirements;

(D) a synthetic minor source in accordance with R307-415-4(6);

(E) located in a nonattainment area or a maintenance area for any pollutant; or

(F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or

(B) within 15 days of the date the notice in (1) above is

published for comment periods established under (ii).

(iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii) above.

(v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

(3) The executive secretary will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The executive secretary will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the executive secretary determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the executive secretary will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a) or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity

of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replaced process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the executive secretary before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the executive secretary will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the executive secretary is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the executive secretary no later than 60 days after the changes are made. The executive secretary will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the executive secretary to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the executive secretary. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the executive secretary or the executive secretary's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the executive secretary prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(4) The following control devices do not require a notice

of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

- (a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or
- (b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the executive secretary prior to beginning the remediation project:

- (1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);
- (2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and
- (3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

R307-401-19. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen

oxides.

R307-401-20. Relaxation of Limitations.

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

KEY: air pollution, permits, approval orders

February 8, 2008

19-2-104(3)(q)

Notice of Continuation July 13, 2007

19-2-108

R317. Environmental Quality, Water Quality.**R317-1. Definitions and General Requirements.****R317-1-1. Definitions.**

1.1 "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "COD" means chemical oxygen demand.

1.8 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.9 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.10 "Division" means the Utah State Division of Water Quality.

1.11 "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, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.12 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.13 "Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

1.14 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.15 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.16 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.17 "Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

1.18 "Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Board controls the installation of such systems.

1.19 "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 and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

1.20 "Operating Permit" is a State issued permit issued to any wastewater treatment works covered under R317-3 or R317-

5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

1.21 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.22 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.23 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.24 "Sewage" is synonymous with the term "domestic wastewater".

1.25 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.26 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.27 "SS" means suspended solids.

1.28 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "TSS" means total suspended solids.

1.31 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

1.32 "Wastes" 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).

1.33 "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.

1.34 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, 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

that 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, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Board or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be

determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards), except that the Board may waive compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-

day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of *E. coli* bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial uses (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following

manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

- 7.1 Middle Bear River -- February 23, 2010
- 7.2 Chalk Creek -- December 23, 1997
- 7.3 Otter Creek -- December 23, 1997
- 7.4 Little Bear River -- May 23, 2000
- 7.5 Mantua Reservoir -- May 23, 2000
- 7.6 East Canyon Creek -- September 1, 2000
- 7.7 East Canyon Reservoir -- September 1, 2000
- 7.8 Kents Lake -- September 1, 2000
- 7.9 LaBaron Reservoir -- September 1, 2000
- 7.10 Minersville Reservoir -- September 1, 2000
- 7.11 Puffer Lake -- September 1, 2000
- 7.12 Scofield Reservoir -- September 1, 2000
- 7.13 Onion Creek (near Moab) -- July 25, 2002
- 7.14 Cottonwood Wash -- September 9, 2002
- 7.15 Deer Creek Reservoir -- September 9, 2002
- 7.16 Hyrum Reservoir -- September 9, 2002
- 7.17 Little Cottonwood Creek -- September 9, 2002
- 7.18 Lower Bear River -- September 9, 2002
- 7.19 Malad River -- September 9, 2002
- 7.20 Mill Creek (near Moab) -- September 9, 2002
- 7.21 Spring Creek -- September 9, 2002
- 7.22 Forsyth Reservoir -- September 27, 2002
- 7.23 Johnson Valley Reservoir -- September 27, 2002
- 7.24 Lower Fremont River -- September 27, 2002
- 7.25 Mill Meadow Reservoir -- September 27, 2002
- 7.26 UM Creek -- September 27, 2002
- 7.27 Upper Fremont River -- September 27, 2002
- 7.28 Deep Creek -- October 9, 2002
- 7.29 Uinta River -- October 9, 2002
- 7.30 Pineview Reservoir -- December 9, 2002

- 7.31 Browne Lake -- February 19, 2003
- 7.32 San Pitch River -- November 18, 2003
- 7.33 Newton Creek -- June 24, 2004
- 7.34 Panguitch Lake -- June 24, 2004
- 7.35 West Colorado -- August 4, 2004
- 7.36 Silver Creek -- August 4, 2004
- 7.37 Upper Sevier River -- August 4, 2004
- 7.38 Lower and Middle Sevier River -- August 17, 2004
- 7.39 Lower Colorado River -- September 20, 2004
- 7.40 Upper Bear River -- August 4, 2006
- 7.41 Echo Creek -- August 4, 2006
- 7.42 Soldier Creek -- August 4, 2006
- 7.43 East Fork Sevier River -- August 4, 2006
- 7.44 Koosharem Reservoir -- August 4, 2006
- 7.45 Lower Box Creek Reservoir -- August 4, 2006
- 7.46 Otter Creek Reservoir -- August 4, 2006
- 7.47 Thistle Creek -- July 9, 2007
- 7.48 Strawberry Reservoir -- July 9, 2007
- 7.49 Matt Warner Reservoir -- July 9, 2007
- 7.50 Calder Reservoir -- July 9, 2007
- 7.51 Lower Duchesne River -- July 9, 2007
- 7.52 Lake Fork River -- July 9, 2007
- 7.53 Brough Reservoir -- August 22, 2008
- 7.54 Steinauer Reservoir -- August 22, 2008
- 7.55 Red Fleet Reservoir -- August 22, 2008
- 7.56 Newcastle Reservoir -- August 22, 2008
- 7.57 Cutler Reservoir -- February 23, 2010

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to \$10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to \$25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an

attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Executive Secretary to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

KEY: water pollution, waste disposal, industrial waste, effluent standards
November 19, 2010
Notice of Continuation October 2, 2007

19-5

R317. Environmental Quality, Water Quality.**R317-102. Utah Wastewater State Revolving Fund (SRF) Program.****R317-102-1. Policies and Guidelines.**

The administrative rules described in R317-101, Utah Wastewater Project Assistance Program apply as a part of this Rule.

R317-102-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to finance all or part of wastewater project costs from the SRF is provided in Title VI of the Federal Clean Water Act and Sections 73-10b-1, and 73-10c-1 of the Utah Code Annotated.

R317-102-3. Definitions and Eligibility.

A. Eligible Activities of the SRF. All funds within the SRF must be used solely to provide loans and other authorized forms of financial assistance:

1. for the construction of publicly owned wastewater treatment works as defined in Section 212 of the CWA that appear on the Utah State Project Priority List as described in R317-100-1;

2. for implementation of a nonpoint source pollution control management program under Section 319 of the CWA.

B. First Use Requirement. The categories of funds described below must first be used for any major and minor publicly owned treatment works (POTW) that EPA Region VIII and Utah has previously identified as part of the National Municipal Policy universe:

1. the Federal capitalization grant award under section 205(m) and Title VI of the CWA;

2. repayments of initial loans awarded from the grant; and

3. the State match.

In order for Utah to use these funds for other kinds of treatment works, without unmet enforceable requirements under 212 or programs for nonpoint pollution sources, the Utah Division of Water Quality must certify that the POTWs described above are:

a. in compliance, or

b. on an enforceable schedule, or

c. have an enforcement action filed, or

d. have a funding commitment during or prior to the first year covered by the Intended Use Plan.

C. Types of Financial Assistance

1. Loans

a. Interest Rate. Loans may be made at or below market interest rates.

b. Repayment. Annual repayments of principal and interest will be made to begin not later than one year after project completion. Project Completion shall be defined as the date operations of the treatment works are capable of being initiated. Where a treatment works has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments. At the discretion of the Water Quality Board, principal and interest payments may begin earlier than one year after operations are initiated.

The yearly amount of the principal repayment and the interest payment is set at the discretion of the Water Quality Board.

c. Dedicated Repayment Source. Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan.

2. Refinancing Existing Debt Obligations. The Water Quality Board may use funds from the SRF to buy or refinance local debt obligations at or below market interest rate, where such debt was incurred after March 7, 1985. Refinanced projects must comply with the requirements imposed by the CWA as though they were projects receiving initial financing from the

SRF. Further, where the original debt was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, refinancing from the SRF may be provided only for eligible purposes, and not for the entire debt.

3. Guarantee or Purchase Insurance for Local Debt Obligations.

4. Guarantee SRF Debt Obligations. Resources in the SRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State and deposited in the SRF.

5. Loan Guarantees for sub-State Revolving Funds.

6. Earn Interest on Fund Accounts.

7. SRF Administrative Expenses.

R317-102-4. Compliance with Other Requirements.

Recipients of SRF funds may, if determined by the Water Quality Board, as provided by federal law, be required to meet the following other requirements, cited from the July 1, 1988 edition of the Code of Federal Regulations:

A. Title VI of the Civil Rights Act of 1964, whereby applicants must certify compliance with this act (40 CFR Part 7; Nondiscrimination in Programs Receiving Federal Assistance From EPA; and 40 CFR Part 12: Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Environmental Protection Agency);

B. Minority and Women Owned Business Enterprise Procurement, whereby applicants agree to assist the state in meeting objectives established under 40 CFR 33.240, prior to authorization of the assistance agreement;

C. Accounting Procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements;

D. Construction Payment Schedule, whereby applicants agree to supply the Division of Water Quality with a construction draw-down schedule before the loan closing.

E. Davis-Bacon Labor Wage Provisions. The applicant must apply Davis-Bacon labor wage provisions to treatment works construction (29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et seq.).

D. Following authorization of funds by the Water Quality Board or Executive Secretary, as appropriate, the applicant has a period of six months to meet the conditions of the loan authorization and complete a loan closing. If a loan closing for the project has not occurred within six months of the loan authorization, the funding may be rescinded.

KEY: wastewater, loans, water quality

October 22, 2007

Notice of Continuation November 24, 2010

19-5-104

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective October 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than October 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, October 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective October 1, 2010.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section

1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be

subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services

available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) Prior authorization is a utilization control process to verify that the client is eligible to receive the service and that the service is medically necessary. Prior authorization requirements are identified in Section I sub-section 9 of the Utah Medicaid Provider Manual. Additional prior authorization instructions for specific types of providers is found in Section II of the Medicaid Provider Manual. All necessary medical record documentation for prior approval must be submitted with the request. If the provider has not followed the prior authorization instructions and obtained prior authorization for a service identified in the Medicaid Provider Manual as requiring prior authorization, the Department shall not reimburse for the service.

(4) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(5) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(6) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah

Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this

format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

- (a) hospital a \$220 coinsurance per year;
- (b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

- (c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

- (d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;
- (d) American Indians; and
- (e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

KEY: Medicaid

November 15, 2010
Notice of Continuation April 16, 2007

26-1-5
26-18-3
26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction and Authority.**

(1) This rule governs the provision of speech-language pathology services.

(2) This rule is authorized by Sections 26-18-3 and 26-18-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-54-2. Definitions.

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

R414-54-3. Services.

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual, effective October 1, 2010, which is incorporated by reference.

(3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

R414-54-4. Client Eligibility Requirements.

(1) Speech-language pathology services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.

(3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.

R414-54-5. Reimbursement.

Speech-language pathology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, speech-language pathology services**November 15, 2010****26-1-5****Notice of Continuation March 9, 2009****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-59. Audiology-Hearing Services.****R414-59-1. Introduction and Authority.**

(1) This rule governs the provision of audiology-hearing services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-59-2. Definitions.

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

R414-59-3. Services.

(1) Audiology-hearing services are optional services.

(2) Audiology-hearing services are limited to services described in the Audiology Services Provider Manual.

(3) The Audiology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Audiology-hearing services may be provided to an individual only after being referred by a physician. All audiology-hearing services must be provided by a licensed audiologist.

R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual, effective October 1, 2010, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

R414-59-5. Reimbursement.

Audiology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, audiology**November 15, 2010****Notice of Continuation October 13, 2010****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-506. Hospital Provider Assessments.****R414-506-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36a and governs the services allowed under 42 CFR 447.272.

R414-504-2. Definitions.

The definitions in Section 26-36a-103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Subsection 26-36a-203(3) and (4), the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

R414-506-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36a-204 or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:

Utah Department of Health
DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4 (1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) Facilities not subject to the assessment or payments outlined in this rule as of January 1, 2010, are not eligible to receive Medicaid hospital inpatient access payments.

R414-506-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual

calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-506-6. State Plan Amendment -- Hospital Policy Review Board.

(1) The Hospital Policy Review Board is established under Subsection 26-36a-209(3). It shall serve as an advisory board to DMHF.

(2) The Division Director shall act on behalf of the Executive Director of the Utah Department of Health regarding all Hospital Policy Review Board issues.

(3) DMHF shall appoint a non-voting board member who will manage the Hospital Policy Review Board.

(4) Other individuals of DMHF, as appointed by the Division Director, are non-voting ex-officio advisory members of the Hospital Policy Review Board.

(5) The board shall:

(a) review State Plan Amendments or waivers affecting hospital reimbursement between the date of enactment of this chapter and the end of State Fiscal Year 2013; and

(b) review adjustments to the payment rates for State Fiscal Years 2012 and 2013.

(6) If a board member is unable to serve, DMHF shall fill the vacancy using the same method that it originally used to appoint the board position.

R414-506-7. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36a-208.

R414-506-8. Retrospective Operation.

This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 26-36a-209 of the Hospital Provider Assessment Act.

**KEY: Medicaid
October 13, 2010**

**26-1-5
26-18-3
26-36a**

R539. Human Services, Services for People with Disabilities.**R539-2. Service Coordination.****R539-2-1. Purpose.**

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(2)(a).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(2)(b).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. The Division shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

- (a) severity of the disabling condition;
- (b) needs of the Person and/or family;
- (c) urgency of need
- (d) appropriate alternatives available; and
- (e) other factors determined by the Division to reflect accurately on the Person's need:
 - (i) household composition and size;
 - (ii) parental/caregiver ability;
 - (iii) finances and insurances;
 - (iv) unmet medical needs;
 - (v) problem behaviors;
 - (vi) protective service issues;
 - (vii) resources/supports needed;
 - (viii) time on immediate or future need waiting list.

(4) The Division determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the

waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(2). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Division with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g., Developmental Center staff, school representative, and Division

staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

- (i) services to be provided;
- (ii) location of the service;
- (iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;
- (iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

- (i) Division Specialists;
- (ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;
- (iii) a representative from the Developmental Center; and
- (iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

- (i) Evaluate the Provider's programs; and
- (ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

**KEY: services, people with disabilities
December 1, 2010**

62A-5-102

Notice of Continuation August 17, 2009

62A-5-103

R590. Insurance, Administration.**R590-244. Individual and Agency Licensing Requirements.****R590-244-1. Authority.**

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-35-104, 301(1) and 401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 25, 26, and 35;

(4) Subsection 31A-23a-115(1) that authorizes the commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Chapter 23a; and

(5) Subsections 31A-23a-302(2) and 31A-26-210(1) that authorize the commissioner to adopt a rule prescribing reporting requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a and 26.

R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

- (a) an individual or agency licensee for:
 - (i) obtaining, renewing or reinstating a license; and
 - (ii) making other miscellaneous license amendments;
- (b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and
- (c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to all individuals and agencies licensed under Chapters 23a, 25, 26 and 35.

(b) This rule applies to all admitted insurers doing business in Utah.

R590-244-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Subsections 31A-1-301, 31A-23a-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

- (a) issue or decline to issue a license;
- (b) add or decline to add an additional line of authority to an active license;
- (c) renew or decline to renew an active license; or
- (d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "SIRCON" means an electronic application software provided by SIRCON.

(11) "Termination for cause" means

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in 31A-23a-111(5) by a court, government body, or self-regulatory organization authorized by law.

R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using <http://www.sircon.com/utah> (SIRCON) or <http://www.nipr.com/> (NIPR):

(a) all individual and agency license applications under chapters 23a, 25, 26, and 35 as prescribed in R590-244-6, 7, and 8 for:

- (i) a new license;
- (ii) an additional license type or line of authority;
- (iii) a license renewal; or
- (iv) a license reinstatement;

(b) all appointments, termination of appointments, designations, and terminations of designations as prescribed in R590-244-9 and 10;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Chapters 23a, 25, 26 and 35 as prescribed in R590-244-11;

(d) all documents related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under Chapters 23a, 25, 26 and 35; and

(e) any additional documentation required in connection with an application, except as shown in (iv) below, including but not limited to:

- (i) written explanation and documentation for positive responses to background questions on a license application;
- (ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment of a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment of the document to the application becomes available from SIRCON or NIPR.

(2) Attestation. Submission of an electronic application or other form under this Rule constitutes the applicant's or

submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule, including an application that remains incomplete for a period of 30 days following the initial submission, may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and
(b) an appointment from an insurer or a designation from an agency.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

R590-244-6. New License Application.

(1) A resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using SIRCON.

(2) A non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in (3) below.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's website, until such time that an electronic application becomes available from SIRCON or NIPR.

R590-244-7. Renewal and Non-renewal of an Active License.

(1) An active license shall be renewed on or before the license expiration date as shown below:

(a) A resident license renewal application shall be submitted online via SIRCON.

(b) A non-resident license renewal application shall be submitted online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed.

(4) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in (5) below.

(5) A bail bond agency license shall expire annually on July 15th, unless renewed.

(6) Renewal Notice.

(a) Prior to the license expiration date, the commissioner may, as a courtesy, send a renewal notice to the licensee's business email address as shown on the records of the Department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

(c) A licensee who fails to properly submit to, and maintain with, the commissioner a valid business email address may be subject to administrative penalties.

(7) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration

date, and:

(a) the non-renewed license shall be inactivated;
(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected licensee.

(8) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

R590-244-8. Reinstatement of Inactive License.

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in (3) through (7) below.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in R590-102.

(4) A resident license application for reinstatement of an inactive license shall be submitted using SIRCON, except as shown in (6) below.

(5) A non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in (6) below.

(6) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

(a) a non-resident reinstatement application for a person whose license has been inactivated for failure to maintain an active license in the person's home state;

(b) a resident or non-resident reinstatement application for a person whose license has been voluntarily surrendered; and

(c) a resident or non-resident reinstatement application for a person whose license has been inactivated due to an incomplete renewal application, except as stated in (i) below.

(i) If a resident license has been inactivated due to a renewal application that was incomplete solely for failure to meet the continuing education requirements, a resident reinstatement application must be submitted to the department:

(A) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

(B) 31 days to one year after a license expiration date through SIRCON.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in (3) above, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required new contracts and appointments with insurers or new agency designations before the reinstated licensee can resume doing business.

R590-244-9. Appointments and Termination of Appointments by Insurers.

(1) Initial Appointments.

(a) An insurer shall electronically appoint an individual or agency licensee with whom the insurer has a contract.

(b) Appointments are continuous until terminated by the insurer or canceled by the department.

(c) It is not necessary for an insurer to appoint an individual who is listed as a designee on an appointed agency's license.

(d) To appoint a person, an insurer shall:

(i) identify the date the appointment is to be effective; and

(ii) submit the electronic appointment to the commissioner no later than 15 days after the identified effective date of appointment or receipt of the first insurance application, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the appointment to the commissioner via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic appointment becomes available from SIRCON or NIPR.

(2) Termination of Appointment.

(a) An insurer shall electronically terminate the appointment of any previously appointed individual or agency no longer authorized to conduct business on behalf of the insurer in this state.

(b) To terminate a person's appointment an insurer shall:

(i) identify the date the termination of appointment is to be effective; and

(ii) submit the termination of appointment to the department no later than 30 days after the identified effective date of termination, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the termination of appointment as a facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic termination of appointment becomes available from SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual or agency licensee's appointment, an insurer that terminates an individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the insurer must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-10. Designations and Termination of Designations by Agencies.

(1) Designations.

(a) An agency shall electronically designate a licensed individual to the agency license to do business on behalf of the agency in this state.

(b) Designations are continuous until terminated by the agency or canceled by the department.

(c) To designate an individual on its license, an agency shall:

(i) identify the date the designation is to be effective; and

(ii) submit the designation to the commissioner no later than 15 days after the identified effective date of designation using SIRCON or NIPR.

(2) Termination of designations.

(a) An agency shall electronically terminate the designation of any previously designated individual no longer authorized to conduct business on behalf of the agency in this state.

(b) To terminate an individual's designation an agency

shall:

(i) identify the date the termination of designation is to be effective; and

(ii) submit the termination of designation to the department no later than 30 days after the identified effective date of termination using SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual licensee's designation, an agency that terminates an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the agency must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-11. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).

(1) All miscellaneous license amendments shall be submitted electronically.

(2) The following four miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of email address;

(c) a change of telephone number; or

(d) a change of an individual licensee's name.

(3) The following six miscellaneous license amendments shall be submitted electronically via facsimile or as a PDF attachment to an email, except that a license amendment identified in (d), (e) and (f) shall be submitted via SIRCON or NIPR once the amendment becomes available electronically from SIRCON or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of an agency name;

(d) a change of residence, business, or mailing address from one state to another state;

(e) a change of position or title of an owner, partner, officer, or director of an agency; or

(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(4) A miscellaneous license amendment submitted in accordance with this section shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that all of the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number (EIN):

(a) cannot be processed as a miscellaneous license amendment; and

(b) the entity must apply as a new license applicant.

R590-244-12. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-244-14. 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 licensing requirements
November 9, 2010**

31A-2-201
31A-23a-104
31A-23a-110
31A-23a-111
31A-23a-115
31A-23a-302
31A-25-201
31A-25-208
31A-26-202
31A-26-210
31A-26-213
31A-35-104
31A-35-301
31A-35-401
31A-35-406

R612. Labor Commission, Industrial Accidents.**R612-2. Workers' Compensation Rules-Health Care Providers.****R612-2-1. Definitions.**

- A. All definitions in Rule R612-1 apply to this section.
- B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.
- C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.
- D. "Usual and Customary Rate (UCR)" is the rate of payment to a dental provider using Ingenix, or a similar service, for charges for services for a particular zip code.
- E. Unless otherwise specified, the term "insurer" includes workers' compensation insurance carriers and self-insured employers.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104 and Section 34A-2-407.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, nurse practitioners, physicians and chiropractors shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding. A physician, chiropractor, or nurse practitioner is to report every initial visit for which a bill is generated, including first aid, when a worker reports that an injury or illness is work related. All initial treatment, beyond first aid, that is provided by any health care provider other than a physician, chiropractor, or nurse practitioner must be countersigned by the supervising physician and reported on Form 123 to the Industrial Accidents Division and the insurance carrier or self-insured employer.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion

or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or inpatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407(9):

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 2010 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2010 edition, coding guidelines.

a. The non-facility total unit value will apply in

calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

b. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's 2011 Medical Fee Guidelines and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective December 1, 2010: (Conversion Rates below EFFECTIVE December 1, 2009, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology \$41.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M \$46.00

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 \$46.00

Pathology and Laboratory 150% of Utah's published Medicare carrier

Radiology \$53.00;

Restorative Services \$46.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery \$37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's 2011 Medical Fee Guidelines, effective December 1, 2010. The Utah Medical Fee Guidelines can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at <http://laborcommission.utah.gov/Provider%20Page.html#WorkersCompensation>.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) to establish a reasonable fee for the procedure.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Director of the Division of Industrial Accidents

may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or
 2. A substantial injustice may occur without such further evaluation.
- G. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies,

Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;
2. The 15% restocking fee shall then be added to the amount determined in sub part 1;
3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

A. This rule establishes procedures to obtain dental care for work-related dental injuries and sets fees for such dental care.

B. Initial Treatment.

1. If an employer maintains a medical staff or designates a company doctor, an injured worker seeking dental treatment for work-related injuries shall report to such medical staff or doctor and follow their instructions.

2. If an employer does not maintain a medical staff or designate a company doctor, or if such staff or doctor are not available, an injured worker may consult a dentist to obtain immediate care dental for injuries caused by a work-related accident. The insurer shall pay the dentist providing this initial treatment at 70% of UCR for the services rendered.

C. Subsequent care by initial treatment provider.

1. If additional treatment is necessary, the dentist who provided initial treatment may submit to the insurer a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the cost of the additional treatment. If the dentist proceeds with treatment without authorization, the dentist must accept 70% of UCR as payment in full and may not charge any additional sum to the injured worker.

2. The insurer shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended only with written approval of the Industrial Accidents Division. If the insurer does not respond to the dentist's request for authorization within 10 working days, the insurer shall pay the cost of treatment as contained in the request for authorization.

3. If the insurer approves the proposed treatment, the insurer shall send written authorization to the dentist and injured worker. This authorization shall include the anticipated payment amount.

4. On receipt of the insurer's written authorization, and if the dentist accepts the payment provisions therein, the dentist may proceed to provide the approved services. The dentist must accept the amount to be paid by the insurer as full payment for those services and may not bill the injured worker for any additional amount.

D. Subsequent care by other providers.

1. If the dentist who provided initial treatment does not

agree to the payment offered by the insurer, the insurer shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the insurer's payment offer.

2. If the insurer cannot locate another dentist to provide the necessary services, the insurer shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment. The negotiated reimbursement may not include any balance billing to the claimant.

3. If the insurer is successful in arranging treatment with another dentist, the insurer shall notify the injured worker.

4. If, after having received notice that the insurer has arranged the services of another dentist, the injured worker chooses to obtain treatment from a different dentist, the insurer shall only be responsible for payment at 70% of UCR. Under the circumstances of this subsection (4), the treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

E. Payment or treatment disputes that cannot be resolved by the parties may be submitted to the Labor Commission's Adjudication Division for decision, pursuant to the Adjudication Division's established forms and procedures.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of \$6 per day for breakfast, \$9 per day for lunch, \$15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

- (a) More than \$100 is involved, or
- (b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

- a. An employer's workers' compensation insurance carrier or third party administrator;
- b. A self-insured employer who administers its own workers' compensation claims;
- c. The Uninsured Employers' Fund;
- d. The Employers' Reinsurance Fund; or
- e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker, who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. 1. Except as limited in C(3), a medical provider, whose medical records are relevant to a workers' compensation claim shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

- a. An employer's insurance carrier or third party administrator;
- b. A self-insured employer who administers its own workers' compensation claims;
- c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;
- d. The Uninsured Employers Fund;
- e. The Employers' Reinsurance Fund;
- f. The Labor Commission;
- g. The injured worker;
- h. An injured workers' personal representative;
- i. An attorney representing any of the entities listed above

in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. The records were created in the past ten years (15 years if permanent total disability is claimed) and;

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Requests for medical records beyond what sections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or person listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. 1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

J. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal

representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor commission rules, the following charges are presumed reasonable:

1. A search fee of \$15 payable in advance of the search;

2. Copies at \$.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

L. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

M. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

1. History and physical;

2. Operative reports of surgery;

3. Hospital discharge summary;

4. Emergency room records;

5. Radiological reports;

6. Specialized test results; and

7. Physician SOAP notes, progress notes, or specialized reports.

(a) Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two

key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;
2. The payor's initial payment of that bill;
3. The provider's request for re-evaluation and supporting documentation; and
4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R612-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a

physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R612-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have been made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

R612-2-27. Commission Approval of Health Care Treatment Protocol.

A. Authority. Pursuant to authority granted by Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards:

1. Scientifically based: Section 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Section 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts".

3. Other standards: Pursuant to its rulemaking authority under Section 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

KEY: workers' compensation, fees, medical practitioner
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Notice of Continuation April 28, 2008 34A-3-101 et seq.
34A-1-104

R612. Labor Commission, Industrial Accidents.**R612-10. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.****R612-10-1. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.**

A. Authority - The HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers rule is established under the authority of U.C.A. Section 78B-8-404.

B. Purpose - To establish procedures pursuant to U.C.A. Section 78B-8-401 for source patient testing and reporting following a significant exposure of an emergency medical services provider.

C. Definitions

1. Department means the Utah Labor Commission.

2. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

3. Disease means Human Immunodeficiency Virus, acute or chronic Hepatitis B or Hepatitis C infections.

4. Emergency medical services provider means Emergency Medical personnel as defined in Section 26-8a-102, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital Emergency medical care for an emergency medical services agency either as an employee or a volunteer.

5. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

6. Source Patient means any individual cared for by a prehospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant Exposure" and "Significantly Exposed" mean:

a. exposure of the body of one person to the blood or body fluids visibly contaminated by blood of another person by:

1. percutaneous injury, including a needle stick or cut with a sharp object or instrument; or

2. contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

b. exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

D. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in (C) (2).

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in (C) (2).

E. Receiving Facility Responsibility:

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing, as defined in (C) (3). In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

KEY: workers' compensation, administrative procedures, reporting, settlements

December 2, 2005

34A-2-101 et seq.

34A-1-104

78B-8-402

78B-8-404

78B-8-404

R616. Labor Commission, Boiler and Elevator Safety.**R616-3. Elevator Rules.****R616-3-1. Authority.**

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 2007 ed. issued April 6, 2007, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for Regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 2006 International Building Code.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-2005 Safety Standard For Platform Lifts And Stairway Chairlifts, issued November 29, 2005.

H. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector as outlined in ASME QEI-1, Qualifications for Elevator Inspectors.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a

variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler and Elevator Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or

changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.2.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

B. When a hydraulic elevator has been remodeled it is considered a new installation.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah

Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
November 22, 2010 **34A-1-101 et seq.**
Notice of Continuation November 30, 2006

R628. Money Management Council, Administration.**R628-13. Collateralization of Public Funds.****R628-13-1. Authority.**

This rule is issued pursuant to Sections 51-7-18.1(5).

R628-13-2. Scope.

This rule applies to all qualified depositories required to pledge collateral security for public funds.

R628-13-3. Purpose.

The purpose of this rule is to establish the requirements for pledging of collateral security to insure that public treasurers have a perfected security interest in the collateral security pledged, to define the conditions under which the Council may require the pledging of collateral security in lieu of relinquishment of deposits in excess of the maximum amount a qualified depository may hold under the Money Management Act and the rules of the Council, and to impose restrictions on a qualified depository which is required to pledge collateral security for the public deposits which it holds.

R628-13-4. Definitions.

A. Deposits means balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

B. Designated trustee means the trustee selected to serve as the agent of the State Treasurer to hold and administer collateral security pledged for public funds.

C. Eligible collateral means obligations of or fully guaranteed by the United States or its agencies as to principal and interest, a segregated earmarked deposit account, or notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a federal reserve bank, obligations of the State of Utah or any of its political subdivisions, and readily marketable bonds, notes or debentures.

D. Excess deposit means that portion of the public funds held on deposit with a qualified depository by public treasurers which exceeds the most recently adopted maximum amount of public funds allowed pursuant to the Money Management Act and the rules of the Money Management Council as of the effective date of an order issued by the Commissioner of Financial Institutions pursuant to Section 51-7-18.1(6).

E. Market value means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service or, in the case of obligations which are not regularly traded, the bid price received from at least one registered securities broker/dealer.

F. Readily marketable bonds, notes or debentures means obligations in the form of a bond, note, or debenture rated in one of the three highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

R628-13-5. General Rule.

A. Conditions Under Which Collateral Will Be Allowed

(1) The Money Management Council may vote to allow collateral security to be pledged to secure excess deposits when a qualified depository has accepted and holds public funds in excess of its public funds allotment.

(2) If the public funds allotment is reduced to one times capital, the Money Management Council may vote to allow collateral security to be pledged to secure excess deposits. The qualified depository will not be precluded or prohibited from accepting, renewing or maintaining deposits of public funds if the total amount of deposits from each public treasurer does not exceed the applicable federal deposit insurance limit.

(3) If the public funds allotment is reduced to zero, the

qualified depository will be required to pledge sufficient eligible collateral with the state treasurer's designated trustee for all uninsured deposits. The qualified depository is not precluded or prohibited from accepting, renewing or maintaining deposits of public funds when the total amount of all deposits from each public treasurer does not exceed the applicable federal deposit insurance limit.

After the effective date of any order requiring the pledging of collateral, the qualified depository may not accept, receive or renew uninsured deposits of public funds.

(4) If the amount of capital as defined in R628-11-4-A. is zero or less, the institution is no longer a qualified depository and must relinquish all deposits of public funds within 15 days of the effective date of any order issued by the Commissioner of Financial Institutions requiring relinquishment.

(5) The requirements for pledging of collateral set forth in this rule shall remain in effect until the public funds allotment has been increased to the statutory maximum or 12 months, whichever occurs first. If at the end of the 12 month period the qualified depository institution's public funds allotment has not been increased to the statutory maximum, the qualified depository shall immediately relinquish all excess deposits.

B. Delivery of Collateral

Within 15 days of the effective date of an order requiring collateralization of excess deposits in accordance with the provisions of this rule, a qualified depository shall deliver to the state treasurer or the designated trustee eligible collateral sufficient to meet the statutory collateralization requirements and shall execute a pledge agreement and trust indenture as required by the state treasurer. Collateral delivered to the state treasurer or the designated trustee may not be released until the state treasurer has received written confirmation from the Commissioner of Financial Institutions that the excess deposits have been surrendered or that the qualified depository is eligible to accept, receive and hold public funds without collateralization.

KEY: public investments, collateral, trustees, financial institutions

August 10, 2010

51-7-18.1(5)

Notice of Continuation November 7, 2010

R628. Money Management Council, Administration.**R628-16. Certification as a Dealer.****R628-16-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(1) and 51-7-18.

R628-16-2. Scope.

This rule establishes the criteria applicable to all broker-dealers and agents for certification by the Director of the Securities Division of the Department of Commerce (the "Director") as eligible to conduct investment transactions under the State Money Management Act. It further establishes the application contents and procedures, and the procedures for termination and reinstatement of certification.

R628-16-3. Purpose.

This rule establishes a uniform standard to evaluate the financial condition and the standing of a broker-dealer to determine if investment transactions with public treasurers by broker-dealers would expose public funds to undue risk.

R628-16-4. Definitions.

The following terms are defined in Section 51-7-3 of the State Money Management Act, and when used in this rule, have the same meaning as in the Act:

- A. "Certified dealer";
- B. "Council";
- C. "Director"; and
- D. "Public treasurer".

The following terms are defined in Section 61-1-13 of the Utah Uniform Securities Act, and when used in this rule, have the same meaning as in that Act:

- A. "Agent".

R628-16-5. General Rule.

No public treasurer may conduct any investment transaction through a broker-dealer or any agent representing a broker-dealer unless that broker-dealer has been certified by the Director as eligible to conduct investment transactions with public treasurers.

R628-16-6. Application to Become a Certified Dealer.

A. Any broker-dealer wishing to become a certified dealer under the State Money Management Act must submit an application to the Utah Securities Division.

B. The application must include:

(1) Primary Reporting Dealers: Proof of status as a primary reporting dealer, including proof of recognition by the Federal Reserve Bank, if applicant is a primary reporting dealer.

(2) Office Address: The address of the applicant's principal office. Broker-dealers who are not primary reporting dealers must have and maintain an office and a resident principal in Utah; the application shall include the address of the Utah office and the identity of the resident principal.

(3) Broker-Dealer Registration: Proof of registration with the Division under its laws and rules, effective as of the date of the application, of the following:

- (a) the broker-dealer;
- (b) its resident principal (if one is required); and
- (c) any agents of a firm doing business in the state of Utah.

(4) Corporate Authority: A Certificate of Good Standing, obtained from the state in which the applicant is incorporated. An applicant who is a foreign corporation also must submit a copy of its Certificate of Authority to do business in Utah, obtained from the Corporations Division of the Department of Commerce (hereinafter the "Corporations Division").

(5) Financial Statements: With respect to applicants who are not primary reporting dealers, financial statements, prepared by an independent certified public accountant in accordance

with generally accepted accounting principles, indicating that the applicant has, as of its most recent fiscal year end:

(a) Net Capital: Minimum net capital, as calculated under rule 15c3-1 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (the Uniform Net Capital Rule), of at least 5% of the applicant's aggregate debt balances, as defined in the rule, and;

(b) Total Capital: Total capital as follows:

(i) of at least \$10 million or;

(ii) of at least \$25 million, calculated on a consolidated basis, with respect to an applicant which is a wholly-owned subsidiary.

(6) Government Securities Act Registration: Proof of the firm's registration under the Government Securities Act of 1986 (100 Stat 3208).

(7) Account Documents: Copies of all agreements, contracts, or other documents that the applicant requires or intends to require to be signed by the public treasurer to open or maintain an account. These documents must meet the following requirements:

(a) The Director shall not certify any applicant who requires, or proposes to require, that any dispute arising out of transactions between the applicant and the public treasurer must be submitted to arbitration. The applicant must provide copies of agreements signed or to be signed, which allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court.

(b) Any customer agreement shall provide that suit may be litigated in a Utah court, and that Utah law shall apply in settling disputes, where relevant.

(8) Knowledge of Money Management Act: A notarized statement, signed by a principal and by any agent who has any contact with a public treasurer or its account, that the agent is familiar with the authorized investments as enumerated in Section 51-7-11(3) and the rules of the Council, and with the investment objectives of the public treasurer, as set forth in Section 51-7-17(1).

(9) Fee: A non-refundable fee as described in Section 51-7-18.3(2), payable to the Division.

R628-16-7. Certification.

A. Initial Certification: The initial application for certification must be received on or before the last day of the month for approval at the following month's council meeting.

B. Date of Effectiveness: All certifications shall be effective upon approval by the council.

C. Expiration; Renewal: All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed. Renewal applications must be received on or before April 30 of each year.

R628-16-8. Renewal of Application.

A. Certified dealers wishing to keep their status as certified dealers must reapply annually, on or before April 30 of each year, for recertification to be effective July 1 of each year.

B. The renewal application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The renewal application must be accompanied by an annual renewal fee as described in Section 51-7-18.3(2).

R628-16-9. Post Certification Requirements.

Certified dealers are required to notify the Division of any changes to any items or information contained in the original application within 20 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

R628-16-10. Notification of Certification.

The Director shall provide a list of certified broker-dealers and agents to the Money Management Council at least semiannually. The Council shall mail this list to each public treasurer.

R628-16-11. Grounds for Suspension or Termination of Status as a Certified Dealer.

Any one of the following constitutes grounds for suspension or termination of status as a certified dealer:

A. Termination of the dealer's status as a primary reporting dealer if the dealer gained certification as a primary reporting dealer.

B. Denial, suspension or revocation of the dealer's registration under the Government Securities Act, or by the Division, or by any other state's securities agency.

C. Failure to maintain a principal office operated by a resident registered principal in this state, if applicable.

D. Failure to maintain registration with the Utah Securities Division by the firm or any of its agents having any contact with a public treasurer.

E. Failure to remain in good standing in Utah with the Corporations Division, or to maintain a certificate of authority, as applicable.

F. Failure to submit within 10 days of the due date the required financial statements, or failure to maintain the required minimum net capital and total capital.

G. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

H. The sale, offer to sell, or any solicitation of a public treasurer by an agent or by a resident principal, where applicable, who is not certified.

I. Failure to pay the annual renewal fee.

J. Making any false statement or filing any false report with the Division.

K. Failure to file amended reports as required in section R628-16-9.

L. The sale, offer to sell, or any solicitation of a public treasurer, by the certified dealer or any of its employees or agents, of any instrument or in any manner not authorized by the Money Management Act or rules of the Council.

M. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

N. Failure to maintain registration under the federal Government Securities Act.

O. Engaging in a dishonest or unethical practice in connection with any investment transaction with a public treasurer. "Dishonest or unethical practice" includes, those acts and practices enumerated in Rule R164-6-1g.

R628-16-12. Procedures for Suspension or Termination and Reinstatement of Status.

A. Where it appears to the Division or to the Council that grounds may exist to suspend a certified dealer or terminate status as a certified dealer, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G.

B. All proceedings to suspend a certified dealer or to terminate status as a certified dealer are designated as informal proceedings under the Utah Administrative Procedures Act.

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. At the election of the presiding officer, other members of the Council may issue recommendations to the hearing officer after the close of the hearing.

D. The Notice of Agency Action, or any petition filed in

connection with it, required under the Utah Administrative Procedures Act, shall include a statement of the grounds for termination, and the remedies required to cure the violation.

E. After the date of service of the Notice of Agency Action, the certified dealer and its agents shall not conduct any investment transaction with any public treasurer if so ordered by the Money Management Council. The order issued by the hearing officer at the conclusion of the proceedings shall lift this prohibition if the order allows the certified dealer to keep its status as a certified dealer.

KEY: cash management, public investments, securities regulation, stock brokers

**August 27, 2001 51-7-3(1)
Notice of Continuation November 3, 2010 51-7-18(2)(b)(v)**

R657. Natural Resources, Wildlife Resources.**R657-10. Taking Cougar.****R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(e) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(f) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of any cougar.

(h) "Kitten" means a cougar less than one year of age.

(i) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(j) "Limited entry hunt" means any hunt listed in the hunt tables of the proclamation of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(k) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(l) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(m) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(n) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(o) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(p) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(q) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(3) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Permits for Pursuing Cougar.

(1)(a) To pursue cougar without a limited entry cougar permit, the dog handler must:

(i) obtain a valid cougar pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(b) A cougar pursuit permit or exemption therefrom does not allow a person to kill a cougar.

(2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the proclamations of the Wildlife Board.

(3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) A dog handler may pursue cougar provided he or she possesses:

(a) a valid limited entry cougar permit issued to the dog handler;

(b) a valid cougar pursuit permit; or

(c) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a cougar and there is not an open pursuit season, the dog handler must have:

(a) a limited entry cougar permit issued to the dog handler for the unit being hunted;

(b)(i) a valid cougar pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry cougar permit for the area; or

(c)(i) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry cougar permit for the area.

(5) A dog handler may pursue cougar under:

(a) a cougar pursuit permit only during the season and in

the areas designated by the Wildlife Board in proclamation open to pursuit;

(b) a limited entry cougar permit only during the season and in the area designated by the Wildlife Board in proclamation for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in proclamation open to pursuit.

(6) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from

Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

- (1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.
- (2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.
- (3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

- (1) Legally obtained, tanned cougar hides may be purchased or sold.
- (2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

- (1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.
- (2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

- (1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:
 - (a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;
 - (b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or
 - (c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.
- (2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.
- (3) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:
 - (a) any weapon authorized for taking cougar; or
 - (b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.
 - (i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.
- (4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.
 - (b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.
 - (c) A person may acquire only one cougar annually.
 - (5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.
 - (b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their

cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

- (1)(a) A person may take only one cougar during the season and from the area specified on the permit.
- (b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.
- (c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in proclamation of the Wildlife Board for taking cougar.
 - (2) A person may not:
 - (a) take or pursue a female cougar with kittens or kittens with spots; or
 - (b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.
 - (3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.
 - (4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.
 - (5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.
 - (6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.
 - (7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the proclamation of the Wildlife Board for taking cougar.
 - (b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-34 and 657-10-35.

R657-10-24. Extended and Preseason Hunts.

- (1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

R657-10-25. Cougar Pursuit.

- (1)(a) Except as provided in rule R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.
 - (b) The cougar pursuit permit does not allow a person to:
 - (i) kill a cougar; or
 - (ii) pursue cougar for compensation.
 - (c) A person may pursue cougar for compensation only as provided in Subsection (2).
 - (d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.
 - (2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:
 - (i) receives compensation from a client or customer to pursue cougar;
 - (ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;
 - (iii) possesses on his or her person the Utah hunting guide or outfitter license;
 - (iv) possesses on his or her person all permits and

authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue cougar on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue cougar under Subsection (2).

(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the proclamations of the Wildlife Board regulating the pursuit and take of cougar.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the proclamations of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.

(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in proclamation.

(6) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(7) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(8) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(9) A cougar pursuit permit is valid on a calendar year basis.

(10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. Limited Entry Cougar Permit Application Information.

(1) Limited entry cougar permits are issued pursuant to R657-62-23.

R657-10-27. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

R657-10-28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that unit is met; or

(b) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-30. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-31. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-32. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more than 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported

reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

KEY: wildlife, cougar, game laws

October 25, 2010

Notice of Continuation August 21, 2006

23-14-18

23-14-19

R714. Public Safety, Highway Patrol.**R714-500. Chemical Analysis Standards and Training.****R714-500-1. Authority.**

A. This rule is authorized by Section 41-6a-515 which requires the commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

R714-500-2. Definitions.

A. Certification Report means document prepared by a technician detailing the results of a certification check.

B. Certification Check means analysis of instrument function and calibration performed by technician.

C. Instrument means breath alcohol concentration testing instruments employed by law enforcement officers for evidentiary purposes and approved by the department.

D. Operator means individual certified by the department to administer breath alcohol concentration tests.

E. Breath Alcohol Concentration Test Results means analytical results of a breath alcohol concentration test provided by an approved instrument. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

F. Program means all breath alcohol concentration testing techniques, methods, and programs.

G. Program Supervisor means authorized representative of the Commissioner of Public Safety for the breath alcohol concentration testing program and supervisor of said program.

H. Technician means individual certified by the department to operate, provide training on, and perform maintenance, repairs, and certification checks on breath alcohol concentration testing instruments.

I. Breath Test means test administered by an operator or technician on an instrument for the purpose of determining breath alcohol concentration.

R714-500-3. Purpose.

A. It is the purpose of this rule to set forth:

(1) Procedures whereby the department may certify:

- (a) breath alcohol concentration testing programs;
- (b) breath alcohol concentration testing instruments;
- (c) breath alcohol concentration analytical results;
- (d) breath alcohol concentration testing operators;
- (e) breath alcohol concentration testing technicians; and
- (f) breath alcohol concentration testing program supervisors.

(2) Adjudicative procedure concerning:

- (a) application for and denial, suspension or revocation of the aforementioned certifications; and
- (b) appeal of initial department action concerning the aforementioned certifications.

R714-500-4. Application for Certification.

A. Application for certification shall be on forms provided by the department in accordance with Subsection 63G-4-201(3)(c).

R714-500-5. Program Certification.

A. All programs must be certified by the department.

B. Prior to initiating a program, an agency or laboratory shall submit application to the department for certification. The application shall show the brand or model, or both, of the instrument to be used and contain a resume of the program followed. The department shall inspect to determine compliance with all applicable provisions under R714-500.

C. Certification of a program may be denied, suspended, or revoked by the department if, based on information obtained by the department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the

department.

R714-500-6. Instrument Certification.

A. Criteria: To be approved, each manufacturer's brand or model of instrument shall meet the following criteria:

1. The instrument shall provide accurate and consistent analysis of breath specimen for the determination of breath alcohol concentration for law enforcement purposes;

2. Breath alcohol concentration analysis of an instrument shall be based on the principle of infra-red energy absorption or any other similarly effective procedure as specified by the Department;

3. Breath specimen analyzed shall be essentially alveolar or end expiratory in composition according to the analysis method utilized;

4. Measurement of breath alcohol concentration shall be reported in grams of alcohol per 210 liters of breath;

5. The instrument shall analyze a reference sample during certification checks, following procedures outlined in R714-500-6-D;

6. Other criteria, deemed necessary by the Department, may be required to correctly and adequately evaluate the instrument as practical and reliable for law enforcement purposes.

B. Acceptance: The Department shall approve all breath alcohol concentration testing instruments employed for law enforcement evidentiary purposes.

1. The Department shall maintain an approved list of accepted instruments. Law enforcement entities shall select instruments from this list, which list shall be available for public inspection upon request from the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

2. A manufacturer may apply for approval of an instrument by brand or model not on the list. The Department shall subsequently examine each instrument to determine if it meets criteria specified by R714-500 and applicable purchase requisitions.

3. Upon compliance with R714-500, an instrument may be approved by brand or model and placed on the list of accepted instruments.

4. Certification Reports verifying the certification of all instruments shall be kept on file by the program supervisor and made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

C. Initial Instrument Certification: All breath alcohol concentration testing instruments used for law enforcement evidentiary purposes shall be certified prior to being placed into service.

1. The program supervisor shall determine that each individual instrument, by serial number, conforms to the brand or model that appears on the commissioner's accepted list.

2. Prior to an instrument being placed into service, a technician shall perform a certification check, following the standardized operating procedure and requirements outlined in R714-500-6-D.

3. Upon successful completion of these requirements, the instrument shall be deemed to be operating correctly and may be placed into service.

D. Regular Instrument Certification Checks

1. Once an instrument has been placed into service, it shall be certified by a technician on a routine basis, not to exceed 40 days between certification checks.

2. The program supervisor shall establish a standardized operating procedure for performing certification checks, following requirements set forth in R714-500 or by using such procedures as recommended by the manufacturer of the instrument to meet its performance specifications, as derived

from:

- a. electrical power check;
- b. operating temperature check;
- c. internal purge check;
- d. invalid test procedures check;
- e. diagnostic measurements check;
- f. internal calibration check;
- g. known reference sample check; and
- h. measurements of breath alcohol concentration, displayed in grams of alcohol per 210 liters of breath.

A copy of these standard operating procedures may be made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

3. For known reference sample checks set forth in R714-500-6-D-2-g, the instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight or volume of ethanol held at a constant temperature or a compressed inert gas and alcohol mixture from a pressurized cylinder.

a. The result of the analysis shall agree with the reference sample's predicted value, within parameters of calibration set at plus or minus 5% or 0.005, whichever is greater, or such limits as set by the Department.

i. For example, if a known reference sample has a value of 0.100, the parameters of calibration set at plus or minus 5% would equal 0.005 ($0.100 \times 5\% = 0.005$). Acceptable parameters of calibration using a known 0.100 reference sample would therefore range from 0.095 to 0.105.

b. Analytical results of the known reference sample check shall be reported to three decimal places.

1. Other checks, deemed necessary by the Department or program supervisor, may be required to correctly and adequately evaluate the instrument.

2. Technicians shall follow the standardized operating procedure as set forth by the program supervisor when performing certification checks.

3. If an instrument successfully passes all the certification checks, it shall be deemed to be operating properly.

4. A report of the certification results with the serial number of the certified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

5. Results of certification checks shall be kept in a permanent record retained by the technician or program supervisor.

E. Instrument Repair and Recertification

1. The Department may at any time determine if a specific instrument is unreliable or unserviceable. Upon such a finding, the instrument shall be removed from service and certification withdrawn.

2. A report of the certification results showing the certification has been withdrawn shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

3. Upon proper repair, the instrument may be recertified and again placed into service.

a. Minimum requirements for recertification are identical to those outlined in R714-500-6-D, sub-sections 2, 3, and 4.

4. A report of the certification results with the serial number of the recertified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

R714-500-7. Breath Alcohol Concentration Test Analytical Results.

A. The instrument should be operated by either a certified operator or technician.

B. Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.

1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.

2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.

a. For example, a result of 0.237g/210L shall be reported as 0.237.

C. Results of breath alcohol concentration tests will be printed by the instrument.

D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.

F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

R714-500-8. Operator Certification.

A. All breath alcohol testing operators must be certified by the department.

B. All training for initial and renewal certification will be conducted by a program supervisor or technician.

C. Initial Certification

(1) In order to be certified as a breath alcohol concentration testing instrument operator, an individual must successfully complete a course of instruction approved by the department, which must consist of eight hours of training, including as a minimum the following:

- a. Effects of alcohol in the human body;
- b. Operational principles of breath testing;
- c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
- d. Legal aspects of chemical testing, DUI case law, and other alcohol related laws;
- e. Laboratory participation performing simulated tests on the instruments, including demonstrations under the supervision of a class instructor;
- f. Examination and critique of course.

(2) After successful completion of the initial certification course a certificate will be issued that will be valid for three years.

D. Renewal Certification

(1) The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will consist of eight hours of training, including as a minimum the following:

- a. Effects of alcohol in the human body;
- b. Operational principles of breath testing;
- c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
- d. Legal aspects of chemical testing DUI case law, and other alcohol related laws;
- e. Examination and critique of course;
- f. Or the operator must successfully complete the web-based computer program including successful completion of exam. Results of exams must be forwarded to program supervisor and a certification certificate will be issued.

(2) After successful completion of the re-certification course a certificate will be issued that will be valid for three years.

(3) Any operator who allows their certification to expire one year or longer must retake and successfully complete the initial certification course as outlined in R714-500-8.

R714-500-9. Technician Certification.

- A. All technicians, must be certified by the department.
- B. The minimum qualifications for certification as a technician are:
- (1) Satisfactory completion of the operator's initial certification course and/or renewal certification course;
 - (2) Satisfactory completion of the Breath Alcohol Testing Supervisor's course offered by Indiana University or an equivalent course of instruction, as approved by the program supervisor;
 - (3) Satisfactory completion of the manufacturer's maintenance and repair technician course;
 - (4) Maintenance of technician's status through a minimum of eight hours training each calendar year. This training must be directly related to the breath alcohol testing program and must be approved by the program supervisor.
- C. Any technician who fails to meet the requirements of R714-500-9-B and allows their certification to expire for more than one year, must renew their certification by meeting the minimum requirements as outlined in R714-500-9-B.
- D. Only certified breath alcohol testing technicians shall be authorized to provide expert testimony concerning the certification and all other aspects of the breath testing instrument under their supervision.

R714-500-10. Program Supervisor Certification.

The program supervisor will be required to meet the minimum certification standards set forth in R714-500-9. Certification should be within one year after initial appointment or other time as stated by the department.

R714-500-11. Previously Certified Personnel.

- A. This rule shall not be construed as invalidating the certification of personnel previously certified as operators under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements as outlined in R714-500-8.
- B. This rule shall not be construed as invalidating the certification of personnel previously certified as a technician under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements in R714-500-8.

R714-500-12. Revocation or Suspension of Certification.

- A. The department may, on the recommendation of the program supervisor, revoke or suspend the certification of any operator or technician:
- (1) Who fails to comply with or meet any of the criteria required in this rule; or
 - (2) Who falsely or deceitfully obtained certification; or
 - (3) Who fails to show proficiency in proper operation of the breath testing instrument; or
 - (4) For other good cause.

R714-500-13. Adjudicative Proceedings.

- A. Purpose of section. It is the purpose of this section to set forth adjudicative proceedings in compliance with Title 63G Chapter 4.
- B. Designation. All adjudicative proceedings performed by the department shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.
- C. Denial, suspension or revocation. A party who is denied certification or whose certification is suspended or revoked, will be informed within a period of 30 days by the department the reasons for denial, suspension, or revocation.
- D. Appeal of denial, suspension, or revocation. A party who is denied certification or whose certification is suspended or revoked may appeal to the commissioner or designee on a form provided by the department in accordance with Subsection

63G-4-201(3)(C). The appeal must be filed within ten days after receiving notice of the department action.

E. No hearing will be granted to the party. The commissioner or designee will merely review the appeal and issue a written decision to the party within ten days after receiving the appeal.

KEY: alcohol, intoxilyzer, breath testing, operator certification
November 27, 2010
Notice of Continuation October 5, 2009

41-6a-515
63G-4

R850. School and Institutional Trust Lands, Administration.**R850-6. Government Records Access and Management.****R850-6-100. Purposes and Authority.**

1. This rule provides procedures for appropriate access to agency records.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution; and Sections 63A-12-104, 63G-2-204, 63G-2-603, 53C-1-201(3)(a)(i)(A), and 53C-2-102.

R850-6-200. Definitions.

1. Terms used in this rule are defined in Section 63G-2-103.

2. In addition:

(a) Records coordinators: individuals designated by the agency director to coordinate records access requests and to assist the public in gaining access to records maintained by the agency. Records coordinators are located in the following:

i) Salt Lake Office Public Room, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

ii) Northern Area Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

iii) Central Area Office, 130 N Main St, Richfield, UT 84701.

iv) Southwestern Area Office, 359 East Riverside Drive, St. George, UT 84790.

v) Southeastern Area Office, 1165 South Highway 191, Suite 5, Moab, UT 84532.

R850-6-300. Allocation of Responsibility Within the Agency.

The agency is considered a governmental entity and the director of the agency is considered the head of the government entity.

R850-6-400. Requests for Access.

1. Request for access to records shall be on a form provided by the agency or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The agency shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63G-2-204(1), the agency may, at its discretion, waive the requirement for a written request if the records requested are public, the records are readily accessible and the request is filled promptly by providing access or copying at the time the request is made.

R850-6-500. Other Requests.

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63G-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of a document pertaining to him as maintained by the agency pursuant to Section 63G-2-603.

(a) The request to amend shall be made in writing to the records officer.

(b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures

Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63G-2-309. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the agency should be protected under Section 53C-2-102.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the agency is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the agency agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

i) the lease is terminated and the agency believes the release of the information is not detrimental to the trust; or

ii) the lessee or its successor in interest ceases to exist as an entity and the agency believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The agency may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the agency, provided further that the confidentiality of such information is safeguarded.

R850-6-600. Denials.

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63G-2-205(2).

R850-6-700. Appeal of Determination.

1. Any person aggrieved by an access or status request determination including a person not a party to the agency proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the agency or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought.

2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63G-2-204, 63G-2-603, and 53C-2-102, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the agency in prohibiting access to the record.

R850-6-800. Fees.

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R850-6-200, Definitions.

KEY: GRAMA, government documents, public records
1994 53C-1-201(3)(a)(i)(A)
Notice of Continuation June 27, 2007 53C-2-102

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

- (iv) a licensed Advanced Practice Registered Nurse; or
- (v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit

and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as

income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to

be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial

assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the

client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

- (a) the client's present emotional health and history;
- (b) the intensity and probable duration of the resulting impairment;
- (c) the degree of cooperation required; and
- (d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

- (a) an expected outcome;
- (b) an anticipated completion date;
- (c) the number of participation hours agreed upon per week; and
- (d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

- (i) promptly register for work and commence a search for employment for a specified number of hours each week; and
- (ii) regularly submit a report to the Department on:
 - (A) how much time was spent in job search activities;
 - (B) the number of job applications completed;
 - (C) the interviews attended;
 - (D) the offers of employment extended; and
 - (E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the

employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the

family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her

own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and sisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
- (b) the likelihood that the applicant will obtain immediate full-time employment;
- (c) the applicant's housing stability; and
- (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must:

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-

month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to

exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the

home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It

is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on or before April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
 - (i) the volunteer mentor;
 - (ii) the Department; or
 - (iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer

homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as

income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

- (16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or

volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

TABLE

Household Size	Payment Amount
1	\$288

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent

residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-247. Utah Back to Work Pilot Program (BWP).

(1) BWP is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible unemployment insurance (UI) claimant. To be eligible, a UI claimant must:

(a) be currently receiving UI benefits and have received at least one week of paid UI benefit. The waiting week is not considered a "paid" benefit for the purposes of this section;

(b) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(c) have at least 1 week of UI benefits remaining on his or her claim. The week can be Extended Benefits under 35A-4-402 or Emergency Unemployment Compensation (EUC) benefits as defined by the UI division;

(d) be the parent of at least one minor dependent child and be contributing to the financial support of that child or children;

(e) have not worked for the employer where the claimant is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the BWP program; and

(f) have not previously participated in the BWP or BWY program.

(2) The Utah Back to Work Youth Program (BWY) provides short term subsidized employment for a maximum of three months to unemployed youth 18-24 years of age. BWY youth must be legally eligible to work in the U.S. and be unemployed but do not need to be receiving or eligible to receive UI benefits. BWY youth do not need to be a parent but must meet the requirement of subsection (1)(f) and have not participated in the BWP or BWY program before.

(3) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" under the "Hiring Incentives to Restore Employment Act" of 2010 which "means any employer other than the United States, any State, or any political subdivision" or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$9 per hour. Commission only jobs may qualify if the employer guarantees \$9 per hour or more, employees who receive gratuities plus wages may qualify if the employer reports \$9 per hour or more to the UI Contributions division;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the claimant with at least 35 hours work per week; and

(g) does not hire the claimant for temporary or seasonal work.

(4) Once it has been verified that a claimant has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(5) BWP and BWY will continue for as long as funding is available.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-250. Basic Education Training Provider.

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

R986-200-251. Types of Basic Education Training Providers and Approval Requirements.

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following:

(a) a birth certificate,

(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and:

(a) have been in business in Utah for at least one year;

(b) meet all state and local licensing requirements;

(c) have a satisfactory record with the Better Business Bureau;

(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:

(i) balance sheet, income statement and a statement of changes in financial position;

(ii) copy of the most recent annual business audit; or

(iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

(a) program completion rates for all individuals enrolled;

(b) the type of certification students completing the program will obtain;

(c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

R986-200-252. Renewal and Revocation of Approval for Training Providers.

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

KEY: family employment program

November 15, 2010

35A-3-301 et seq.

Notice of Continuation September 8, 2010