R27. Administrative Services, Fleet Operations.
R27-9. Dispensing Compressed Natural Gas to the Public.
R27-9-1. Authority.

This rule is established pursuant to subsections 63A-9-702(3) which requires the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for the sale of compressed natural gas (CNG) to the public.

R27-9-2. Definitions.

In addition to the terms defined in Section 63A-9-702, as used in Title 63A, Chapter 9, or these rules, the following terms are defined.

(1) "Public" means private individuals or entities as defined in 63A-9-702(1).

(2) "State site" means a fuel site owned and/or operated by the State Fuel Network which dispenses compressed natural gas.

(3) "Geographical compressed natural gas needs of a private individual or entity" means providing CNG fuel to the public beyond one road mile from a privately owned and operated fuel site that is able to meet the natural gas distribution needs of the public.

R27-9-3. Fuel Site Availability.

(1) The division will allow the public to purchase compressed natural gas from the state's fuel network if:

(a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs as defined in R27-9-2(3) and;

(b) there are no emergencies that warrant the holding of compressed natural gas in reserve for use by state or emergency vehicles as determined by the division.

R27-9-4. Terms of Operation.

(1) State owned CNG fuel sites are intended to be operational 24 hours a day, 7 days a week and will be available to the public with the exception of locally posted time restrictions.

(2) CNG dispensing priority shall be given to state and local agencies.

(3) Public customers shall only be able to purchase CNG fuel from the state site with an accepted credit card.

(4) Public customers will be limited to 25 GGE per vehicle per day unless otherwise authorized by the division.

(5) Violation of any term of operation may result in the revocation or suspension of a private individual or entity's authorization to purchase compressed natural gas from state sites.

R27-9-5. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect by a public customer shall be the responsibility of that customer.

KEY: compressed natural gas, CNG, public fueling
March 26, 2012 63A-9-702(3)

R33. Administrative Services, Purchasing and General Services.
R33-1. Utah State Procurement Rules Definitions.
R33-1-1. Definitions.

A. Terms used in the procurement rules are defined in Section 63G-6-103.

B. In addition:

(1) Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines that there is not adequate competition.

(3) Acquiring Agency is an agency subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(5) Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

(6) Chief Procurement Officer means the procurement officer for the State of Utah.

(7) Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

(8) Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

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

(10) Cost Objective means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

(11) Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

(12) Electronic means, in reference to any solicitation process, only those specified electronic forms described in the Invitation for Bids, Request for Proposals or other solicitation document.

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

(14) Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

(15) New Technology means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(16) Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

(17) Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

(18) Price Data means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

(19) Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

(20) Property means all real property, personal property, or both, owned by a purchasing agency.

(21) Providers means suppliers of services, which might be termed "personal services", to benefit clients or citizens of the enacting jurisdiction which services otherwise might be performed by its own employees. For example, an enacting jurisdiction might contract with a school to conduct a training program for the handicapped. Similarly, the state might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

(22) Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

(23) Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

(24) Suppliers means prospective bidders or offerors, as used in section 63G-6-414 of the Utah Procurement Code.

(25) Technology means(e) any type of technology defined in 63F-1-102(8) of the Utah Technology Governance Act.

KEY: government purchasing
March 30, 2012 **63G-6**
Notice of Continuation November 23, 2007

R33. Administrative Services, Purchasing and General Services.
R33-3. Source Selection and Contract Formation.
R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.

3-101 Content of the Invitation For Bids.

(1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where the documents can be obtained.

(4) Acknowledgement of Amendments. The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.

(5) Technology Acquisitions. The Invitation for Bids may state that at any time during the term of a contract, the acquiring agency may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

3-102 Bidding Time. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

3-103 Bidder Submissions.

(1) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) Electronic Bids. The Invitation for Bids may state that electronic bids will be considered whenever they are received at the designated office by the time specified for bid opening.

(3) Bid Samples and Descriptive Literature.

(a) Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

(d) Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) Bid Security. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interests of the purchasing agency. Any requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

(5) Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. Where appropriate, the procurement officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) Publication. Every procurement in excess of $50,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

(b) in a newspaper of local circulation in the area pertinent to the procurement;

(c) in industry media; or

(d) in a government internet website or publication designed for giving public notice.

(3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

3-105 Bidder List; Prequalification.

(1) Purpose. Lists of qualified prospective bidders may be compiled and maintained by purchasing agencies for the purpose of soliciting competition on various types of supplies, services, and construction. Qualifications for inclusion on the lists may include legal competence to contract and capabilities for production and distribution as considerations. However, solicitations shall not be restricted to prequalified suppliers, and unless otherwise provided inclusion or exclusion on the name of a business does not determine whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(2) Public Availability. Subject to procedures established by the procurement officer, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in section 3-107 and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the procurement officer, a copy shall be supplied to all those prospective bidders known to have received an Invitation for

Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

(a) make any changes in the Invitation for Bids including changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information would be inequitable to other bidders.

(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.

(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit proper preparation, to the extent possible the time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

3-108 Pre-Opening Modification of Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written or electronic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.

(2) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

3-109 Late Bids, Late Withdrawals, and Late Modifications.

(1) Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for opening of bids at the place designated for opening is late.

(2) Treatment. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. Records equivalent to those required in section 3-108 (3) shall be made and kept for each late bid, late modification, or late withdrawal.

3-110 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening. They shall be stored in a secure place until bid opening time.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection (3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bids submitted through electronic means shall be received in such a manner that the requirements of this section can be readily met.

(3) Confidential Data. The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidders in writing what portions of the bids will be disclosed.

3-111 Mistakes in Bids.

(1) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in section 3-108.

(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (1), (4) and (6) of this section are met.

(4) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.

(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The procurement officer may waive these informalities. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(C) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(D) Mistakes Where Intended Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

(6) Written Approval or Denial Required. The procurement officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Approval or denial may be

so indicated on the bidder's written request for correction or withdrawal.

3-112 Bid Evaluation and Award.

(1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is the best interests of the purchasing agency as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) re-solicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63G-6-103(24) and responsive bidder is defined in Subsection 63G-6-103(25).

(3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(b) examination of such elements as appearance, finish, taste, or feel; or

(c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of criteria include transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:

(a) be reasonable estimates based upon information the purchasing agency has available concerning future use; and

(b) treat all bids equitably.

(5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the procurement officer may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting an extension shall be documented.

(6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

(c) if the procurement officer determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under subpart 3-4 or subpart 3-5, as appropriate.

(7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the procurement officer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

(a) where identical low bids include the cost of delivery, award the contract to the bidder closest to the point of delivery;

(b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;

(c) award to the identical bidder with the earliest delivery date;

(d) award to a Utah resident bidder or for a Utah produced product where other tie bids are from out of state;

(e) if price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market; or

(f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

(a) the Invitation for Bids;

(b) the supply, service, or construction item;

(c) all the bidders and the prices submitted; and

(d) procedure for resolving tie bids. A copy of each record shall be sent to the Attorney General if the tie bids are in excess of $50,000.

3-114 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the procurement officer deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable:

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

(b) to conduct discussions for the purposes of facilitating

understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

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

3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

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

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

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

(e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction item offered. Prior to the award of the selection of the lowest responsive and responsible bidder following phase two, technical offerors shall be shown only to purchasing agency personnel having a legitimate interest in them. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (5) of this section.

(5) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(6) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. The bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi- Step Sealed Bidding, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

3-118 Carrying Out Phase Two.

(1) Initiation. Upon the completion of phase one, the procurement officer shall either:

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

(b) invite each acceptable bidder to submit a price bid.

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

(a) as specifically set forth in section 3-114 through section 3-120 of these rules; and

(b) no public notice need be given of this invitation to submit.

3-119 Procuring Governmental Produced Supplies or Services.

Purchasing agency requirements may be fulfilled by procuring supplies produced or services performed incident to programs such as industries of correctional or other governmental institutions. The procurement officer shall determine whether the supplies or services meet the purchasing agency's requirements and whether the price represents a fair market value for the supplies or services. If it is determined that the requirements cannot thus be met or the price is not fair and reasonable, the procurement may be made from the private

sector in accordance with the Utah Procurement Code. When procurements are made from other governmental agencies, the private sector need not be solicited to compete against them.

3-120 Purchase of Items Separately from Construction Contract.

The procurement officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3-121 Exceptions to Competitive Sealed Bid Process.

(1) The Chief Procurement Officer, head of a purchasing agency or designee may utilize alternative procurement methods to purchase items such as the following when determined to be more practicable or advantageous to the state.

(a) Used vehicles

(b) Livestock

(2) Alternative procurement methods including informal price quotations and direct negotiations may be used by the Chief Procurement Officer, head of the purchasing agency or designee for the following:

(a) Hotel conference facilities and services

(b) Speaker honorariums

(3) Subject to the provisions of Section 63F-1-205, testing of new technology for a duration not to exceed the maximum time necessary to evaluate the technology may be permitted. Public notice of the test and testing period shall be conducted under R33-3-4. Unless otherwise approved by the chief procurement officer or head of a purchasing agency, in no event shall a contract entered into under this part or any testing period exceed twelve consecutive months. Upon conclusion of the test period:

(a) a determination has been made by the acquiring agency that the new technology is not advantageous to the acquiring agency; or

(b) an open procurement shall be conducted under these rules.

(4) Documentation of the alternative procurement method utilized shall be part of the contract file.

3-130 Reverse Auctions.

(1) Definition. In accordance with Utah Code Annotated Section 63G-6-402 a "reverse auction" means a process where:

(a) contracts are awarded in a open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated against the established criteria by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase submit their price bids through a reverse auction.

(3) Use. The reverse auction method will be used when the procurement officer deems it to the advantage of the purchasing agency.

3-131 Pre-Bid Conferences in Reverse Auctions.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers, or to explain the reverse auction process.

3-132 Procedure for Phase One of Reverse Auctions.

(1) Form. A reverse auction shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the reverse auction Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

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

(d) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(e) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(f) the manner which the second phase reverse auction will be conducted.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, technical offers shall remain confidential and shall be available only to purchasing agency personnel and those involved in the selection process having a legitimate interest in them.

(4) Non-Disclosure of Proprietary Data. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing. If a bidder has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the procurement officer shall examine the request in the proposal to determine its validity prior to the beginning of phase two. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portion of the bid will be disclosed and that, unless the bidder withdraws the bid it will be disclosed.

(5) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (6) of this section.

(6) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement

officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(7) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer is unacceptable, the officer shall notify the bidder. After this notification the bidder shall not be afforded an additional opportunity to modify their technical offer.

3-133 Carrying Out Phase Two of Reverse Auctions.

(1) Upon the completion of phase one, the procurement officer shall invite those technically qualified bidders to participate in phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(2) The invitation for bids shall:

(a) establish a date and time for the beginning of phase two;

(b) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.

(3) Following receipt of the first bid after the beginning of phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.

(a) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.

(b) Bid prices may not be increased after the beginning of phase two.

3-134 Mistakes During Reverse Auctions.

(1) Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-132(5) (procedure for Phase One of Reverse Auctions, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

(2) A phase two bid may be withdrawn only in accordance with 3-111. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the procurement officer may cancel the solicitation or reopen phase two bidding to all bidders deemed technically qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:

(a) whether there may be a need for price and service negotiation;

(b) whether there may be a need for negotiation during performance of the contract;

(c) whether the relative skills or expertise of the offerors will have to be evaluated;

(d) whether cost is secondary to the characteristics of the product or service sought, as in a work of art; and

(e) whether the conditions of the service, product or delivery conditions are unable to be sufficiently described in the Invitation for Bids.

(2) Determinations.

(a) Except as provided in Section 63G-6-408 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

(b) The procurement officer may make determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The officer who made the determination may modify or revoke it at any time and the determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, whenever practicable, the competitive sealed proposal process shall be used. Examples of professional services generally best procured through the RFP process are accounting and auditing, court reporters, x-ray technicians, legal, medical, nursing, education, actuarial, veterinarians, and research. The procurement officer will make the determination. Architecture and engineering professional services are to be procured in compliance with R33-5-510.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with section 3-101 provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and

(b) a statement of when and how price should be submitted.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-204.1 Protected Records.

The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.

(a) Trade Secrets. Trade Secrets, as defined in Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(b) Certain commercial information or nonindividual financial information. Commercial information or nonindividual financial information subject to the provisions of Section 63G-2-305(2) will be a protected record and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(c) Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a

GRAMA statute provided that the requirements of R33-3-204.2 are met unless GRAMA requires such nondisclosure without any preconditions.

3-204.2 Process For Requesting Non-Disclosure. Any person (firm) who believes that a record should be protected under R33-3-204.1 shall include with their proposal or submitted document:

(a) a written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA; and

(b) a concise statement of reasons supporting each claimed provision of business confidentiality.

3-204.3 Notification. The person who complies with R33-3-204.2 shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.

3.204.4 Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under R33-3- 204.1 but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This R33-3-204-4 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3-204.5 Timing of Public Disclosure. Any allowed public disclosure of records submitted in the competitive sealed proposal process will only be made after the selection of the successful offeror(s) has been made public.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under section 3-104.

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with section 3-106. Any conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with section 3-107 prior to submission of proposals. After submission of proposals, amendments to the Request for Proposals shall be distributed only to offerors who submitted proposals and they shall be allowed to submit new proposals or to amend those submitted. An amendment to the Request for Proposals may be issued through a request for submission of Best and Final Offers. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Request for Proposals shall be canceled and a new Request for Proposals issued.

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with section 3-108. For the purposes of this section and section 3-209, the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals, and Late Modifications.

(1) Definition. Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late.

(2) Treatment. No late proposal, late modification, or late withdrawal will be considered unless received before contract award, and the late proposal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. All documents shall be kept relating to the acceptance of any late proposal, modification or withdrawal.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such proposals shall be securely stored until the time and date set for opening. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

3-211 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

(3) Classifying Proposals. For the purpose of conducting discussions under section 3-212, proposals shall be initially classified as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The procurement officer should establish procedures and schedules for conducting discussions. If before, or during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended in compliance with R33-3-2(3-207) to incorporate this clarification or change. Auction techniques and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(4) Best and Final Offers. The procurement officer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the procurement officer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise,

no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

3-213 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in section 3-208.

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection (3) of this section are met.

(3) Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(a) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.

(c) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(i) the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

(ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and the correction would not be contrary to the fair and equal treatment of other offerors.

(d) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis that the proof would be contrary to the fair and equal treatment of other offerors.

(4) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

3-214 Award.

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

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

3-215 Publicizing Awards.

(1) After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.

(2) The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3- 204;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under R33-3-204.

(3) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers in relation to their individual scores or rankings;

(b) non-public financial statements; and

(c) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

3-216 Exceptions to Competitive Sealed Proposal Process.

(1) As authorized by Section 63G-6-408(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

(2) Subject to the provisions of Section 63F-1-205, testing of new technology for a duration not to exceed the maximum time necessary to evaluate the technology may be permitted. Public notice of the test and testing period shall be conducted under R33-3-4. Unless otherwise approved by the chief procurement officer or head of a purchasing agency, in no event shall a contract entered into under this part or any testing period exceed twelve consecutive months. Upon conclusion of the test period:

(a) a determination has been made by the acquiring agency that the technology is not advantageous to the acquiring agency; or

(b) an open procurement shall be conducted under these rules.

(3) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

3-217 Multiple Award Contracts for Human Service Provider Services.

The Chief Procurement Officer, head of a purchasing

agency or designee may elect to award multiple contracts for Human Service Provider Services through a competitive sealed proposal process by first determining the appropriate fee to be paid to providers and then contracting with all providers meeting the criteria established in the RFP. However this specialized system of contracting for human service provider services may only be used when:

(1) The agency has performed an appropriate analysis to determine appropriate rates to be paid;

(2) The agency files contain adequate documentation of the reasons the contractor was awarded the contract and the reasons for selecting a particular contractor to provide the service to each client; and

(3) The agency has a formal written complaint and appeal process, notice of which is provided to the contractors, and an internal audit function to insure that selection of the contractor from the list of awarded contractors was fair, equitable and appropriate.

R33-3-3. Small Purchases.

3-301 Authority to Make Small Purchases.

(1) Amount. The Office of the Chief Procurement Officer or purchasing agency may use these procedures if the procurement is estimated to be less than $50,000 for supplies, services or construction. If these procedures are not used, the other methods of source selection provided in Section 63G-6-410 of the Utah Procurement Code and these rules shall apply.

(2) Existing Statewide Contracts. Supplies, services, or construction items available under statewide contracts or similar agreements shall be procured under these agreements in accordance with the provisions or requirements for use and not under this subpart unless otherwise authorized by the Chief Procurement Officer.

(3) Available from One Business Only. If the supply, service, or construction item is available only from one business, the sole source procurement method set forth in subpart 3-4 of these rules shall be used.

(4) Division of Requirements. Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 63G-6-410 of the Utah Procurement Code.

3-302 Small Purchases of Supplies, Services or Construction Between $5,000 and $50,000.

(1) Procedure. Insofar as it is practical for small purchases of supplies, services or construction between $5,000 and $50,000, no less than two businesses shall be solicited to submit electronic, telephone or written quotations. Award shall be made to the business offering the lowest acceptable quotation.

(2) Records. The names of the businesses offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3-303 Small Purchases of $5,000 or Less.

The Chief Procurement Officer shall delegate to state agencies the ability to make purchases up to $5,000 without involvement of the Division of Purchasing and General Services. For purchases up to $1,000, the agency may select the best source without seeking competitive quotes. For purchases over $1,000 and up to $5,000, agencies shall obtain price competition, and shall purchase the item from the vendor offering the lowest quote. Unless otherwise delegated requests for all purchases over $5,000, and sole source purchases exceeding $1,000 shall be submitted to the Division of Purchasing and General Services.

3-304 Small Purchases of Services of Professionals, Providers, and Consultants.

If it is expected that the services of professionals, providers, and consultants can be procured for less than $50,000, the procedures specified in this subpart may be used.

R33-3-4. Sole Source Procurement.

3-401 Conditions For Use of Sole Source Procurement.

Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

Examples of circumstances which could necessitate sole source procurement are:

(1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;

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

(3) a test or pilot is being conducted under R33-3-121(3);

(4) procurement of items for resale;

(5) procurement of public utility services.

The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer. Each request shall be submitted in writing by the using agency. The officer may specify the application of the determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

3-401.5 Notice of Proposed Sole Source Procurement.

Public notice for sole source procurements exceeding $50,000 shall be given by the Procurement Officer as provided in R33-3-104 (2). The notice shall be published at least 5 working days in advance of when responses must be received in order that firms have an adequate opportunity to respond to the notice. The notice shall contain a brief statement of the proposed procurement, the proposed sole source supplier and the sole source justification. The notice shall invite comments regarding the proposed sole source and provide for a closing date for comments. The Procurement Officer shall consider the comments received before proceeding with the Sole Source procurement.

3-402 Negotiation in Sole Source Procurement.

The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3-403 Unsolicited Offers.

(1) Definition. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(2) Processing of Unsolicited Offers. If a purchasing agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the head of the agency shall forward the offer to the procurement officer who has authority with respect to evaluation, acceptance, and rejection of the unsolicited offers.

(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer:

(a) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the purchasing agency; and

(b) may be subject to testing under terms and conditions specified by the agency.

R33-3-5. Emergency Procurements.

3-501 Definition of Emergency Conditions.

An emergency condition is a situation which creates a threat to public health, welfare, or safety as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be determined by the Chief Procurement Officer or designee. The existence of this condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.

3-502 Scope of Emergency Procurements.

Emergency procurement shall be limited to only those

supplies, services, or construction items necessary to meet the emergency.

3-503 Authority to Make Emergency Procurements.

The Chief Procurement Officer may delegate in writing to any purchasing agency authority to make emergency procurements of up to an amount set forth in the delegation.

3-504 Source Selection Methods.

(1) General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, competition that is practicable shall be obtained.

(2) After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3-505 Determination of Emergency Procurement.

The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular supplier. The determination shall be sent promptly to the Chief Procurement Officer.

R33-3-6. Responsibility.

3-601 Standards of Responsibility.

(1) Standards. Among factors to be considered in determining whether the standard of responsibility has been met are whether a prospective contractor has:

(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) a satisfactory record of integrity;

(c) qualified legally to contract with the purchasing agency; and

(d) unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.

Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) Information Pertaining To Responsibility. A prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

3-602 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that the contractor possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

3-603 Written Determination of Nonresponsibility Required.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. The determination shall be made part of the procurement file.

R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

(3) Prepayments.

(a) In general, it is the policy of the state that payments to contractors and vendors cannot be made until after services are actually rendered or goods are actually received. It may be necessary or beneficial to the state in certain instances to pay for goods or services before delivery.

(b) Prepayments are allowable in any of the following circumstances when approved by the Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, and the using agency has policies and procedures that ensure that prepaid goods or services are actually received in the condition as required by the contract or purchase order:

(i) When it is the customary practice for the type of goods or services involved, including insurance, rent, certain maintenance contracts, seminars, or subscriptions.

(ii) When the using agency will receive additional benefit for prepayment, including price breaks on prepaid maintenance contracts, or registrations which would not be available if the charge was paid after delivery, and other benefits which are identifiable.

(c) All prepaid expenditures must be supported by documentation, which states the goods or services to be

furnished, the date of delivery, the payment terms, and remedies for non-compliance.

(d) The Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, may:

(i) Authorize the use of prepayments upon receipt of a written request from the using agency. The request must acknowledge that the using agency understands the liability and risk associated with the failure of a vendor or contractor to perform the prepaid services or provide the prepaid goods.

(ii) Require a performance bond in an amount up to 100% of the prepayment amount. The performance bond must be delivered to the state prior to the time the contract is executed or a purchase order is issued. Performance bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and be on forms acceptable to the state. If a contractor or vendor fails to deliver a required performance bond, the original award may be cancelled and the award may thereafter be made in accordance with the applicable provision of Rule R33-3.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior to Use. A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

(a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing

mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinite Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the

procurement officer. Before exercising this option, the procurement officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3-710 Multi-Year Contracts; Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.

3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision to that effect included in the solicitation. When a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

3-712 Technology Modification

(1) Technology Upgrade. Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. Any modification to a contract for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified.

2) New Technology. Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. No contract modification for new technology requested by an acquiring agency shall be exercised without the approval required under Section 63F-1-205, the new technology modification has been subject to the review as described in R33-3-101(5) and the contracting parties agree to the modification.

(3) No contract may be extended beyond the term of the contract included in the solicitation except as provided in the Utah Procurement Code.

R33-3-8. Cost or Pricing Data and Analysis; Audits.

3-801 Scope.

This subpart sets forth the pricing policies which are applicable to contracts of any type and any included price adjustments when cost or pricing data are required to be submitted.

3-802 Requirements for Cost or Pricing Data.

(1) Submission of Cost or Pricing Data - Required. Cost or pricing data shall be required in support of a proposal leading to:

(a) the pricing of any contract expected to exceed $100,000 to be awarded by competitive sealed proposals or sole source procurement; or

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the procurement officer. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(2) Submission of Cost or Pricing Data - Permissive. After making determination that circumstances warrant action, the procurement officer may require the offeror or contractor to submit cost or pricing data in any other situation except where the contract award is made pursuant to competitive sealed bidding. Generally, cost or pricing data should not be required where the contract or modification is less than $2,000. Moreover, when less than complete cost analysis will provide a reasonable pricing result on awards or for change orders without the submission of complete cost or pricing data, the procurement officer shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(3) Exceptions. Cost or pricing data need not be submitted and certified:

(a) where the contract price is based on:

(i) adequate price competition;

(ii) established catalog prices or market prices, if trade discounts are reflected in the prices; or

(iii) prices set by law or rule; or

(b) when the procurement officer determines in writing that the requirements for submitting cost or pricing data may be waived and the reasons for the waiver are stated in the determination. A copy of the determination shall be kept in the contract file and made available to the public upon request. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

If, despite the existence of an established catalog price or market price, the procurement officer considers that a price appears unreasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by limited data pertaining to the differences in the item or services, requests should be so limited.

3-803 Submission of Cost or Pricing Data and Certification.

Cost or pricing data shall be submitted to the procurement officer at the time and in the manner prescribed in these rules or as otherwise from time to time prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, the data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep the submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in section 3-804 of this subpart. A refusal by the offeror to supply the required data shall be referred to the procurement officer whose duty shall be to determine in writing whether to disqualify the noncomplying

offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the procurement officer who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

(1) Form of Certificate. When cost or pricing data must be certified, the certificate set forth below shall be included in the contract file along with any award documentation required under these rules. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

"CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the Utah Procurement Rules submitted, either actually or by specific identification in writing, to the procurement officer in support of . . ., are accurate, complete, and current as of date, month and year. . . The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the purchasing agency which are part of the proposal.

Firm

Name

Title

Date of Execution . . . (This date should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.)"

(End of Certificate)

(2) Limitation of Representation. Because the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the offeror's or contractor's judgment is based. A certificate of current cost or pricing data is not a substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Inclusion of Notice and Contract Clause. Whenever it is anticipated that a certificate of current cost or pricing data may be required, a clause giving notice of this requirement shall be included in the solicitation. If a certificate is required, the contract shall include a clause giving the purchasing agency a contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete, and current data.

(4) Exercise of Option. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

3-805 Defective Cost or Pricing Data.

(1) Overstated Cost or Pricing Data. If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the purchasing agency shall be entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in this amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) Understated Cost or Pricing Data. In determining the amount of an adjustment, the contractor shall be entitled to an adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the purchasing agency's claim for over stated cost or pricing data arising out of the same pricing action.

(3) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with subsections 3-805(1) and 3-805(2) of this subpart.

3-806 Price Analysis Techniques.

Price analysis is used to determine if a price is reasonable and acceptable. It involves a comparison of the prices for the same or similar items or services. Examples of price analysis criteria include:

(1) price submissions of other prospective bidders or offerors;

(2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;

(3) prices published in catalogs or price lists; and

(4) prices available on the open market.

In making an analysis, consideration must be given to any differing delivery factors and contractual provisions, terms and conditions.

3-807 Cost Analysis Techniques.

(1) General. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

(a) specific elements of costs;

(b) the necessity for certain costs;

(c) the reasonableness of amounts estimated for the necessary costs;

(d) the reasonableness of allowances for contingencies;

(e) the basis used for allocation of indirect costs;

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and

(g) the reasonableness of the total cost or price.

(2) Evaluations. Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates. They shall also include consideration of whether the costs are reasonable and allocable under these rules.

3-808 Audit.

(1) The procurement officer may, at reasonable times and places, audit or cause to be audited, the books and records of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to:

(a) the cost or pricing data submitted;

(b) a contract, including subcontracts, other than a firm fixed-price contract, awarded pursuant to these rules and the Utah Procurement Code.

(2) An audit performed by an auditor selected or approved by the procurement officer shall be submitted containing at least the following information:

(a) for cost and pricing data audits:

(i) a description of the original proposal and all submissions of cost or pricing data;

(ii) an explanation of the basis and the method used in preparing the proposal;

(iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;

(iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;

(v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and

(vi) a statement identifying any information obtained from other sources;

(b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

(c) the use of federal assistance funds; or

(d) the fluctuation of market prices affecting the contract.

The scope of the audit may be limited by the procurement officer.

(3) For contract audits, the scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the contract to which the audited data relates and a statement of the degree to which the auditor believes the audited data evidence compliance with those terms.

3-809 Retention of Books and Records.

(1) Relating to Cost and Pricing Data. Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract.

(2) Relating to Other than Firm Fixed-Price Contracts. Books and records that relate to a contract in excess of $25,000, including subcontracts, other than a firm fixed-price contract, shall be maintained:

(a) by a contractor, for three years from the date of final payment under the contract; and

(b) by a subcontractor, for three years from the date of final payment under the subcontract.

R33-3-9. Plant or Site Inspection; Inspection of Supplies or Services.

3-901 Inspection of Plant or Site.

Circumstances under which the purchasing agency may perform inspections include inspections of the contractor's plant or site in order to determine:

(1) whether the standards set forth in section 3-601 have been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

3-902 Access to Plant or Place of Business.

The purchasing agency may enter a contractor's or subcontractor's plant or place of business to:

(1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;

(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63G-6-415 subsection (5) of the Utah Procurement Code; and

(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63G-6-804 of the Utah Procurement Code.

3-903 Inspection of Supplies and Services.

(1) Provisions for Inspection. Contracts may provide that the purchasing agency may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements or, after award, to contract requirements, and are acceptable. These inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

(2) Trial Use and Testing. The procurement officer is authorized to establish operational procedures governing the testing and trial use of various equipment, materials, and supplies by any using agency, and the relevance and use of resulting information to specifications and procurements.

3-904 Conduct of Inspections.

(1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

(3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

3-905 Inspection of Construction Projects.

On-site inspection of construction shall be performed in accordance with the terms of the contract.

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R33. Administrative Services, Purchasing and General Services.
R33-4. Specifications.
R33-4-1. General Provisions.

4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item, or technology adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of the criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4-103 Emergency Authority.

In the event of an emergency, as determined by the procurement officer, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these rules.

4-104 Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) Application of Section. This section applies to all persons who may prepare a specification.

(b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with subsection (2) (a) of this section or a qualified products list has been developed in accordance with subsection (2) (d) of this section for a particular supply, service, or construction item, or need, it shall be used unless the procurement officer makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The procurement officer should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items, or technology;

(iii) needs of the using agency;

(iv) a new technology that the acquiring agency does not currently possess; or

(v) technology that is new or subject to future advancements during the course of any contract term.

(f) The procurement officer may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the procurement officer.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the procurement officer.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the procurement officer.

(b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the procurement officer determines that a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the procurement officer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, a specification may be used when the procurement officer or designee makes a written determination. The determination may be in any form deemed acceptable to the chief procurement officer, as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The procurement officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63G-6-410 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the Chief Procurement Officer, or the head of a

purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

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R33. Administrative Services, Purchasing and General Services.
R33-6. Modification and Termination of Contracts for Supplies, Services, Construction, and Technology.
R33-6-101. Contract Modifications.

(1) Contracts may be modified when it is determined in writing by the Chief Procurement Officer or head of a purchasing agency that the modification is in the best interest of the acquiring agency. Contract modifications must be in compliance with the Utah Procurement Code.

(2) Modifications to existing contracts for supplies, services, construction and new technology or advancements or upgrades in technology are allowed subject to the provisions of R33-3-101(5) provided:

(a) The initial solicitation indicated that the procurement was for an entire system, project service or technology;

(b) The initial solicitation indicated that the entire system, project, service or technology included: all future modules, components, programs, upgrades and technological advancements related to the system, project, service or technology;

(c) The modification is substantially within the scope of the original procurement or contract;

(d) An acquiring agency has complied with Section 63F-1-205 for contracts involving technology; and

(e) All parties agree to the modification.

(3) If the modification is not allowed under subsection (2) of this rule, the acquiring agency may keep the original contract while procuring the additional contract, or may terminate the original contract, whichever is in the best interest of the acquiring agency. If the contract is terminated, then the vendor shall be paid for the services or work properly performed up to the date of termination; all in accordance with the contract provisions.

R33-6-102. Changes Clause.

Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

"Changes"

Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(1) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency,

(2) method of shipment or packing; or

(3) place of delivery.

Adjustments of Price or Time or Performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract."

R33-6-103. Stop Work Order Clause.

(1) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes or realignment of programs.

(2) Use of Orders.

(a) Because stop work orders may result in increased costs by reason of standby costs, these orders will be issued only with prior approval of the procurement officer.

(b) Stop work orders shall include, as appropriate:

(i) a clear description of the work to be suspended;

(ii) instructions as to the issuance of further orders by the contractor for material or services.

(c) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(3) Clause.

"Stop Work Order"

Order to Stop Work. The procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:

(a) cancel the stop work order;

(b) terminate the work covered by the order; or

(c) terminate the contract.

Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(b) the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage.

Termination of Stopped Work. If the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and the adjustment shall be in accordance with the Price Adjustment Clause of this contract."

R33-6-104. Variations in Estimated Quantities Clause.

(1) Definite Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

Variation in Quantity

Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(a) the unit prices for the increased quantity increment will remain the same; and

(b) an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

(2) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(a) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(b) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(c) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(d) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids will be solicited.

R33-6-105. Price Adjustment Clause.

The following clause may be used when price adjustments are anticipated:

Price Adjustment

Price Adjustment Methods. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(1) by agreement on a fixed-price adjustment;

(2) by unit prices specified in the contract;

(3) in another manner as the parties may mutually agree; or

(4) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Utah State Procurement Rules."

R33-6-106. Termination for Default Clause.

Termination For Default

Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with sufficient diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the nonperformance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason or any failure in performance of this contract in accordance with its terms if the failure arises out of acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provision of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause."

R33-6-107. Liquidated Damages Clause.

Liquidated Damages

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for $..... per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency.

R33-6-108. Termination for Convenience Clause.

Termination For Convenience

Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the notice of termination and may incur obligations to do so.

Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) of this paragraph.

(2) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufacturing materials made under agreement, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(a) contract prices for supplies or services accepted under the contract;

(b) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on a portion of the work not including anticipatory profit or consequential damages, less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c) (ii) of this paragraph;

(d) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(4) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Utah State Procurement Rules."

R33-6-109. Novation, Assignment or Change of Name.

(1) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(2) Recognition of a Successor in Interest; Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the agency; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are changed.

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March 30, 2012 **63G-6**
Notice of Continuation January 29, 2009

R70. Agriculture and Food, Regulatory Services.
R70-530. Food Protection.
R70-530-1. Authority and Purpose.

(1) Authority.

Promulgated under the authority of the Section 4-5-17.

(2) Purpose.

This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

R70-530-2. Scope.

This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

R70-530-3 Incorporation by Reference.

(1) The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, April 1, 2008 edition, 40 CFR 185, July 1, 2007 edition, and 9 CFR 200 to End, January 1, 2008 edition, are incorporated by reference.

(2) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(3) with the following additions or amendments:

(a) Amend section 8-103.10 to read:

8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(b) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times.

(c) Amend Section 8-302.14 (C) to read:

A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.

(f) Amend section 8-304.11(J) to read:

Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:

(g) Amend section 8-304.11(K) to read:

Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(h) Amend section 8-401.10(A) to read:

(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.

(i) Amend section 8-501.10(B) to read:

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee;

(j) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(k) Amend section 8-601.10 to read:

Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.

(l) Amend section 8-701.30 to read:

Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).

(m) Amend section 8-803.10 to read:

8-803.10 Embargo, Detainment and Destruction of Adulterated Food Products Authorized.

(A) The embargo and detainment of adulterated food products is authorized under Section 4-5-5, UCA.

(B) The regulatory authority may place an embargo or detainment tag on food found to be adulterated and unfit for human consumption.

(C) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order, where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(D) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, the regulatory authority may condemn, destroy or render unsalable for human food the adulterated food if deemed necessary for the protection of the public health.

(E) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(F) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.

(n) Amend section 8-803.60 to read:

The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.

(o) Amend section 8-803.90 to read:

The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.

(p) Amend section 8-804.30 number/catchline to read:

8-804.30 Contents of the Summary Suspension Notice.

(q) Amend section 8-805.10(A) to read:

(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.

(r) Amend section 8-805.20 to read:

A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the

right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.

(s) Amend section 8-805.50(A)(1) to read:

(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(t) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(v) Amend subsection 8-805.50(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(v) Amend section 8-805.60 number/catchline to read:

8-805.60 Notice of Hearing Contents.

(w) Amend section 8-805.80 number/catchline to read:

8-805.80 Expeditious and Impartial Hearing.

(x) Amend section 8-805.90 number/catchline to read:

8-805.90 Confidentially of Hearing and Proceedings.

(y) Amend section 8-805.90(A) to read:

(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.

(z) Amend section 8-806.30(B) to read:

(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer.

(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(ab) Amend section 8-807.60 to read:

Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.

(ac) Amend section 8-808.20 to read:

Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.

(ad) Amend section 8-811.10(B) to read:

(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of $5,000.00 or be punished for violation of a class B misdemeanor for the first violation. Each day the violation exits may constitute a separate violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6.

(ae) Amend section 8-813.10 number/catchline to read:

8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.

(af) Amend section 8-813.10(B) to replace the phrase "designate amount" with the phrase "$5,000".

(ag) Add paragraph 8-813.10(D) to read:

(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order.

(4) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

KEY: food safety, inspections
September 25, 2008 4-5-17
Notice of Continuation March 7, 2012

R131. Capitol Preservation Board (State), Administration.
R131-9. Art and Exhibits.
R131-9-1. Purpose.

Pursuant to Sections 63C-9-401, 63C-9-402, 63C-9-702 and 63C-9-703, Utah Code, this rule defines the role of the Capitol Preservation Board, Executive Director of the Capitol Preservation Board and the Capitol Art Placement Subcommittee in regard to art and exhibits on the Capitol Hill Complex including Capitol Hill Facilities and Capitol Hill Grounds.

R131-9-2. Authority.

This rule is authorized by Subsection 63C-9-301(3), Utah Code, directing the Board to make rules to govern, administer and regulate the Capitol Hill Complex including Capitol Hill Facilities and Capitol Hill Grounds.

R131-9-3. Legislative and Governor's Areas of Jurisdiction.

(1) The Board recognizes the Legislature has jurisdiction in the legislative area as described in Section 36-5-1, Utah Code, with certain exceptions described in Section 36-5-1.

(2) The Board recognizes the Governor has jurisdiction in regard to those areas reserved for the Governor in Section 67-1-16, Utah Code, with certain exceptions described in Section 67-1-16.

(3) To the extent permitted by law, the Executive Director may enter into agreements with the Legislative Management Committee in regard to the legislative area under legislative jurisdiction and with the Office of the Governor in regard to the area reserved for the Governor under the Governor's jurisdiction.

R131-9-4. Definitions.

(1) "Board" means the Capitol Preservation Board created under Section 63C-9 201, Utah Code.

(2) "Subcommittee" means Capitol Art Placement Subcommittee to the Capitol Preservation Board as created under Section 63C-9-702, Utah Code.

(3) "Short Term Event" means, for the purpose of this Rule R131-9, the providing of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds, that is for forty-five (45) days or less.

(4) "Mid Term Event" means, for the purpose of this Rule R131-9, the providing of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds, that is for more than forty-five (45) days but not longer than six (6) months.

(5) "Long Term Event (Display)" means, for the purpose of this Rule R131-9, a display of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds that is for more than six (6) months.

R131-9-5. Procurement of Art and Exhibits.

(1) The Executive Director may procure art or exhibits in accordance with applicable laws and rules.

(2) The Executive Director, Subcommittee, or any Board member may make recommendations to the Board regarding any of the procurements under this rule.

R131-9-6. Application Process For Event/Display of Art or an Exhibit.

(1) A request for a Short Term Event, Mid Term Event, or Long Term Event (Display), including a request to place new art or a new exhibit may be initiated by the Board, the Subcommittee, the Executive Director, or any person.

(2) The Application for Art and Exhibits at the Utah State Capitol Complex, developed by the Executive Director and approved by the Capitol Art Placement Subcommittee, must be completed by the applicant and submitted to the Capitol Preservation Board Office for evaluation, regardless of event length. The Application includes requests for the following information:

(a) The name and contact information of the applicant;

(b) A description of the subject matter and type of event (Short Term, Mid Term, or Long Term); and

(c) A description of how the request complies with the applicable Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10, and all criteria in Rule R131-9-7.

(3) For Mid Term Events or Long Term Events (Display), the Capitol Preservation Board Office will invite the applicant to attend the next Capitol Art Placement Subcommittee meeting to present their request.

(4) Application is at the applicant's own risk, including costs and expenses for applying.

R131-9-7. Capitol Master Plan and Event/Display Criteria.

All recommendations and determinations under this Rule R131-9 must comply with all of the following:

(1) The Capitol Master Plan. The most recent Capitol Master Plan adopted by the Board shall be met. Any reference in the Master Plan to "Curator" shall be deemed to refer to the appropriate reviewing authority.

(2) State Interest. The request must benefit the interests of the State of Utah.

(3) Preservation or Enhancement. The request must explain how the aesthetics, historical significance, art and architecture of the Capitol Hill Complex will be preserved or enhanced if such request is approved.

(4) Community Standards. The Executive Director, Subcommittee, or Board shall make recommendations or decisions based on community standards of morality. No request shall be approved where the content violates community standards or is obscene or proscribed by Title 76, Chapter 10, Section 1203 of the Utah State Criminal Code. If applicable, the Utah Attorney General's Office shall be consulted prior to any such determination.

(5) Preferences. Only a limited amount of Short Term Events, Mid Term Events, or Long Term Events (Displays) can be allowed pursuant to this Rule R131-9. The longer the duration of the Event/Display on the Capitol Hill Complex, the stricter the standard of approval will be applied. Documentation establishing compelling reasons for such Event/Display is required with the Application. Preference will be provided to those applications that encompass the following:

(a) The history of Utah, including being associated with events, persons or cultures of historical significance, both while as a State and prior periods;

(b) The history of the Capitol;

(c) The essential natural beauty of the State of Utah;

(d) The industry of the State of Utah;

(e) Government and civics and/or;

(f) Art, artifacts and fabric relating to the Capitol.

(6) Other Criteria. Other criteria may be added to those listed in this R131-9-7 as determined by the Board, Subcommittee or Executive Director.

R131-9-8. Roles of the Executive Director, the Subcommittee, and the Board.

(1) The Executive Director, Subcommittee, or Board reserves the right in their discretion to decide whether the request should be approved, approved with conditions, or denied. No applicant has any right to have a Short Term Event, Mid Term Event, or Long Term Event (Display) at the Capitol Hill Complex.

(2) Short Term Event applications shall be processed and determined by the Executive Director, in accordance with the

requirements of this Rule R131-9.

(3) Mid Term Events shall be processed and determined by the Executive Director and the Subcommittee in accordance with requirements of this Rule R131-9. The Board shall be advised periodically of any decision of such Mid Term Events.

(4) Long Term Events (Displays) shall be processed and determined by the Executive Director and the Board, after receiving a recommendation from the Subcommittee, in accordance with this Rule R131-9.

(5) The final determination must comply with the Capitol Master Plan and applicable Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10.

R131-9-9. Contract and Insurance.

(1) Any request that is approved or approved with conditions pursuant to this Rule R131-9 shall require a contract. The contract shall be approved by the Attorney General's Office and executed by the applicant and the Executive Director.

(2) Any breach of contract by the applicant or anyone under the control of the applicant, shall be grounds by the Board for removal of the Short Term Event, Mid Term Event, or Long Term Event (Display), from the Capitol Hill Complex. The Executive Director shall provide the applicant a minimum of five business days written or electronic notice of such breach of contract to cure the breach, with the exception of immediate removal if public safety is at risk or there is interference with the operation of the Capitol Hill Complex.

(3) The applicant will be responsible for providing insurance.

R131-9-10. Inventory and Review of Long Term Events (Displays) and Specific Criteria and Causes for Removal.

(1) On an annual basis, the Executive Director shall make available to the Subcommittee and the Board, an inventory of the Long Term Events (Displays) that remain on the Capitol Hill Complex.

(2) Long Term Events (Displays) that exceed a period of five years in length may be reviewed by the Board every five years. These Events (Displays) are subject to a new determination to either be approved to continue, be approved with conditions, or be denied approval to continue. If the five year review results in an approval with conditions that is unacceptable to the applicant, or a denial, then the Long Term Event (Display) shall be removed in accordance with the applicable contract and Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10.

(3) The Short Term, Mid Term, or Long Term Event (Display) may be ordered removed at any time if any of the following exists:

(a) It requires excessive or unreasonable maintenance;

(b) It is damaged to an extent that repair is unreasonable or impracticable;

(c) It presents a threat to public safety;

(d) There are significant changes in the use, character or actual design of the site requiring re-evaluation of the relationship of the Event (Display) to the site;

(e) The Board wishes to replace it with another item of greater significance; and/or

(f) Donated items may be considered for relocation when it is more appropriately grouped with other items sharing a common theme.

R131-9-11. Items on Loan.

(1) Requests by anyone for art, exhibits or displays in public areas on the Capitol Hill Complex from a loaning person, entity, or institution, must be made by contacting the Capitol Preservation Board Office. The loaned item must be approved by the appropriate authority with the applicable criteria based on whether it is a Short Term Event, Mid Term Event or Long Term Event (Display). If the request for loaned artwork is approved, the Capitol Preservation Board Office will coordinate the loan, movement, and hanging of the artwork.

(2) If the loaned artwork is no longer wanted for display by the provider or the State, the Capitol Preservation Board Office will coordinate the movement or return of the artwork.

R131-9-12. Removing or Relocating.

(1) A request to remove or relocate any approved item may be initiated by the Board, the Subcommittee, the Executive Director, or any person.

(2) The request for removal or relocation shall be determined by the original approving authority.

(3) Removal or relocation of the item is to only be handled by the Capitol Preservation Board Office or as arranged by the Capitol Preservation Board Office.

KEY: CPB, art, policy, program

March 9, 2012	**63C-9-301**
Notice of Continuation April 7, 2010	**63C-9-701**
	63G-9-702
	63C-9-703

R152. Commerce, Consumer Protection.
R152-6. Utah Administrative Procedures Act Rules.
R152-6-1. Designation of Adjudicative Proceedings.

A. All adjudicative proceedings within the Division shall be informal.

B. No hearing will be held unless specifically allowed or required under any laws administered by the Division, or by the Utah Administrative Procedures Act. If a hearing is allowed, it will be held only if timely requested pursuant to Department Rule 151-46b-10.

R152-6-2. Designation of Presiding Officer.

The presiding officer in any proceeding shall be the director of the division. The director may designate another person to act as presiding officer in any proceeding or portion thereof.

KEY: administrative procedure, government hearings, consumer protection
1992 13-2-5(1)
Notice of Continuation March 26, 2012

R152. Commerce, Consumer Protection.
R152-15. Business Opportunity Disclosure Act Rules.
R152-15-1. Authority and Purpose.

Pursuant to Section 13-15-3, these rules are intended to assist in the administration of the Business Opportunity Disclosure Act, Chapter 15, Title 13.

R152-15-2. Filing Requirements. Filing Fees.

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;

(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63J-1-303 Utah Code Annotated (1953, as amended), which presently is set as follows:

(i) Section 13-5-4 filing: $200.00 per year; and

(ii) Section 13-15-4.5 filing: $100.00 per year.

(2) Amendment of disclosures. The disclosure document must be current as of the seller's most recent fiscal year, or no later than 90 days after the close of its most recent fiscal year. A seller must amend any information it files or filed with the Division in the event of any material change in the information. Such amendment shall be made by filing with the Division, within a reasonable time after such material change, the new or correct information.

(a) "Material change" means any change in information where there is a reasonable likelihood the decision of a prospective purchaser to purchase or not purchase the assisted marketing plan would be influenced by the change.

(b) Without limitation, example of material changes include:

(i) An increase or decrease in the initial or continuing fees charged by the seller;

(ii) The termination, cancellation, failure to renew or reacquisition of a significant number of purchasers of an assisted marketing plan since the most recent date of filing;

(iii) Any significant change in seller's management;

(iv) Any significant change in the seller's or purchaser's obligations;

(v) Significant decrease in seller's income or net worth or;

(vi) Significant change in claims about past sales or projected sales, income, gross or net profits, cash flows or costs involved in the assisted marketing plan.

KEY: franchises, marketing, consumer protection
August 13, 2002 13-15-3
Notice of Continuation March 22, 2012 13-2-5

R152. Commerce, Consumer Protection.
R152-20. New Motor Vehicle Warranties.
R152-20-1. Authority and Purpose.

These rules are promulgated to prescribe for the administration of Title 13, Chapter 20, the New Motor Vehicle Warranties Act (hereinafter the "Act"), and are under the authority granted the Division under Section 13-2-5.

R152-20-2. Definitions.

A. For purposes of determining whether a nonconformity has been subject to repair the required number of times, an "attempt" to repair, as used in Section 13-20-4 or 13-20-5, means that the vehicle is or has been presented to the manufacturer or its agent for the same non-conformity.

B. "Collateral charges" as used in Section 13-20-4 includes, but is not limited to:

1. Sales taxes
2. Document preparation fees
3. The cost of additional warranties or extended warranties, if included in the purchase price

C. "Comparable new motor vehicle" as used in Section 13-20-4 means:

1. A motor vehicle that is determined by the division to be identical to, or reasonably equivalent to, the nonconforming vehicle had it conformed to all applicable express warranties. A comparable new motor vehicle includes any service contracts, contract options, and factory or dealer installed options that were originally included in the sale of the nonconforming vehicle; or
2. A vehicle with an equivalent retail value including any service contracts, and factory or dealer installed options that were originally included with the nonconforming vehicle, if the consumer consents to a different make or model.

D. "New motor vehicle" as used in Section 13-20-4 means a motor vehicle which has never been titled or registered and has been driven fewer than 7,500 miles.

E. "Nonconforming vehicle" as used in Section 13-20-4 means a motor vehicle that does not meet all express warranties provided in the sales agreement or contract.

F. "Purchase price" as used in Section 13-20-4 means the actual amount paid for the vehicle. "Purchase price" includes taxes, licensing fees, and additional warranty fees, but does not include collateral charges.

G. "Reasonable allowance" as used in Section 13-20-4 for mileage means the dollar value based on the prescribed deduction per mile. The cap on a reasonable allowance shall be calculated as the purchase price divided by 100,000, but shall not in any case be less than ten (10) cents per mile nor more than twenty-one (21) cents per mile. The consumer shall not be liable for mileage on the vehicle at the time of delivery, nor for mileage during the time the vehicle was being repaired.

R152-20-3. Replacement or Refund of Nonconforming Motor Vehicles.

A. When the manufacturer is repurchasing a nonconforming motor vehicle that has been leased to a consumer, the following provisions also apply:

1. The manufacturer shall refund to the lessor all payments made under the lease.
2. The refund or repurchase price shall include trade-in value, inception payment, and security deposit.
3. The manufacturer shall make all payments on behalf of the lessee, to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle. The excess from said payments shall be paid to lessee. Upon the lessor's and/or lienholder's receipt of the payment, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

B. If a manufacturer is unable to provide a comparable new motor vehicle, it may provide, upon the consent of the consumer, a replacement vehicle of comparable quality. The customer shall not incur additional expense with respect to the replacement vehicle, except as a reasonable allowance for use of the buy-back vehicle.

KEY: automobiles, automobile repair, consumer protection, motor vehicles
March 20, 2007 63G-3-201
Notice of Continuation March 22, 2012 13-2-5
13-20-1

R152. Commerce, Consumer Protection.
R152-22. Charitable Solicitations Act.
R152-22-1. Authority.

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

R152-22-2. Definitions. Clarifications.

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

R152-22-3. Application for Charitable Organization Permit.

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;

(h) a copy of the applicant's IRS Form 990, 990EZ or 990PF; and

(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-4. Financial Reports and IRS Form 990s.

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

R152-22-5. Notice of Claim of Exemption.

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

(2) A notice of claim of exemption shall contain:

(a) a detailed description of the claimant and its charitable purposes;

(b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;

(c) any documents supporting the notice of claim of exemption;

(d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and

(e) such other additional information the division deems necessary to support such claim of exemption.

(3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.

(4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's

registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-7. Incomplete Applications.

(1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.

(2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.

(3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.

(4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of $25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

R152-22-8. Commencement of Solicitation.

(1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.

(2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63G-4-502.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

KEY: charities, consumer protection, solicitations

April 2, 2007	**13-2-5**
Notice of Continuation March 22, 2012	**13-22-6**
	13-22-8
	13-22-9
	13-22-10

R152. Commerce, Consumer Protection.
R152-23. Utah Health Spa Services.
R152-23-1. Authority.

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended.

R152-23-2. Scope and Applicability.

These rules shall apply to the conduct of every Health Spa within the State of Utah.

R152-23-3. Definitions.

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of membership contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a Health Spa that is doing business in Utah.

(5) "Personal Trainer" means an individual who is a health spa under Section 13-23-2 because the individual (1) hires another individual, either as an employee or an independent contractor, to provide instruction to assist patrons to improve their physical condition or appearance through aerobic conditioning, strength training, fitness training or other exercise, and (2) is granted the use of a facility that contains exercise equipment.

R152-23-4. Registration Requirements.

(1) A Health Spa may not operate in this state without first having received a registration permit from the Division. The application for a permit shall be completed on the form provided by the Division.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the Health Spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for membership services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the Health Spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of membership contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each Personal Trainer who will use the Health Spa's facilities during the year.

(3) A separate registration shall be required for each facility that is maintained and operated by a Health Spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the Health Spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

R152-23-5. Health Spa Membership Contracts.

(1) Health Spa membership contracts shall contain the following provisions:

(a) Each membership contract shall contain:

(i) the date of the transaction;

(ii) the name and address of the Health Spa; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each membership contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) Health Spas that are required to comply with the surety requirement shall contain a provision that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER, OR ASSIGNS OF THE SELLER, OF THIS CONTRACT IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE MEMBER INTENDS TO PATRONIZE, SELLER WILL REFUND TO MEMBER A PRORATA SHARE OF THE MEMBERSHIP COST, BASED UPON THE UNUSED MEMBERSHIP TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) Health Spas that are not required to comply with the surety requirement shall contain a provision that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT."

(c) All membership contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the membership contract are subject to deletion or change at the discretion of the facility.

(d) Each membership contract shall include one of the following provisions regarding the consumer's right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) Membership contracts sold in advance sales shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE. IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME."

(ii) All other membership contracts shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

(e) All membership contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

(f) Every membership contract shall clearly state the beginning and expiration dates of its term. In any event, no membership contract shall provide for a membership term of longer than thirty-six (36) months.

(2) The membership contract or any attachment to it shall clearly state any rules of the Health Spa that apply to:

(a) the consumer's use of its facilities and services; and
(b) cancellation and refund policies of the Health Spa.
(3) Each membership contract shall specify which equipment or facility of the Health Spa is omitted from the contract's coverage.

R152-23-6. Rescission.
(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).
(2) When the membership contract is the result of the Health Spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

R152-23-7. Procedure When Facility Closes.
(1) In the event a Health Spa shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide health spa services to members holding valid membership contracts, the Health Spa shall, after obtaining the Division's approval, immediately refund the unused portion of all membership fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed.(2) Within ten (10) business days of the closure of its facility, the Health Spa shall provide the Division with a copy of each membership contract that was valid on the date of closure.
(3) The Division shall determine the amount of refunds that shall be made and to whom. Such refunds shall be made under the supervision and with the prior approval of the Division. If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount that is determined to be due to all members. The refund amount due shall be determined by multiplying the number of days remaining on the member's contract term as of the date of closure by the daily cost of such membership to the member at the time of purchase. The Health Spa shall remain responsible for the balance.
(4) For purposes of Sections 13-23-5(6) and (7), the distance of five miles shall be calculated by the distance traveled by an automobile over a public road.
(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:
(a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;
(b) Information concerning the members of the health spa, including:
(i) the total number of members;
(ii) the name, address, email address, and telephone number of each member;
(iii) the total cost of each membership; and
(iv) the effective beginning and ending dates of each membership;
(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23- 5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;
(d) A description of what action the health spa plans to take with regard to its members, including:
(i) the amount of each member's refund;
(ii) any reason refunds are not to be made;
(iii) an explanation of how refunds are to be calculated; and
(iv) copies of the refund checks that the health spa has issued; and
(e) Any complaints that the health spa has received from the members and how the complaints were resolved.

R152-23-8. Bond, Irrevocable Letter of Credit, or Certificate of Deposit.
(1) The surety required by Section 13-23-5(2) shall be provided to the Division not less than 30 days in advance of any advanced sales by any Health Spa. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division not less than 30 days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.
(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the Health Spa shall submit another surety within 15 days following notice by the Division. In no event shall a Health Spa operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.
(3) In addition to the members' refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2)(c) and (e).

KEY: consumer protection, health spas
August 9, 2010 **63G-3-201**
Notice of Continuation March 22, 2012 **13-2-5**
13-23-1

R152. Commerce, Consumer Protection.
R152-42. Uniform Debt-Management Services Act Rules.
R152-42-1. Authority, Purpose and Definitions.

These rules are promulgated under Utah Code Section 13-42-102(9)(c), 13-42-112(2), 13-42-132(3), and 13-42-132(6) to facilitate the orderly administration of the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42.

R152-42-2. Application for Registration.

In addition to the requirements contained in Sections 13-42-105 and 13-42-106, applicants shall submit to the division with their initial application a copy of the applicant's articles of incorporation or other organizational documentation showing the applicant's current legal status.

R152-42-3. Registration in Another State.

(1) If a provider holds a license or certificate of registration authorizing it to provide debt-management services in another state, the provider may submit a copy of that license or certificate and the application for that license or certificate, instead of an application in the form prescribed by the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42, provided that the license or certificate was issued by one of the following states:

(a) Rhode Island, pursuant to Rhode Island General Laws, Title 19, Chapter 14.8;

(b) Delaware, pursuant to Delaware Code Annotated, Title 6, Chapter 24A; or

(c) any state approved by the Division by rule.

(2) To qualify under this rule, the provider must meet all the requirements of Utah Code Section 13-42-112, including filing a surety bond or substitute in accordance with Utah Code Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

R152-42-4. Independent Accrediting Organizations.

In order to comply with requirements of Utah Code Section 13-42-106(8) a provider must provide evidence of accreditation by an independent accrediting organization approved by the Director of the Division that assures compliance with industry standards. A list of organizations that have been approved can be found on the Division's website or obtained by contacting the Division.

R152-42-5. Certification of Counselors.

In order to comply with the requirements of Utah Code Section 13-42-106(9), a provider must provide evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor. A list of organizations or programs that have been approved can be found on the Division's website or by contacting the Division.

R152-42-6. Adoption of Base Year.

Pursuant to Utah Code Section 13-42-132(6), the Division adopts a base year of 2007.

KEY: debt-management, consumer protection

May 22, 2007	**13-42-102(9)(c)**
Notice of Continuation March 22, 2012	**13-42-112(2)**
	13-42-132(3)
	13-42-132(6)

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 67.

R156-67-104. Organization - Relationship to Rule R156-1.

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

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the ACGME, for which exemption from licensure is requested under the provisions of Subsection 58-1-307(1)(c) shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(4) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the

licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of

Radiology in violation of Subsection R156-67-502(9):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):
First Offense: $100-$500
Second Offense: $500-$3,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):
First Offense: $100-$5,000
Second Offense: $500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
First Offense: $500-$5,000
Second Offense: $1,500-10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the

licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ii) 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 in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(jj) 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 in violation of Subsection R156-1-501(2):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(kk) 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 in violation of Subsection R156-1-501(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ll) 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 in violation of Subsection R156-1-501(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(mm) 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 in violation of Subsection R156-1-501(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):
First Offense: $5000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-

502(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.
(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) 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.

R156-67-602. Medical Records.
In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:
(1) all applicable laws, regulations, and rules; and
(2) the "AMA Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.
(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:
(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;
(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;
(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:
(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;
(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and
(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and
(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:
(i) evidence of advice to the patient in accordance with Subsection (c); and
(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.
(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing

March 9, 2012	**58-67-101**
Notice of Continuation March 14, 2011	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(10) "FSMB" means the Federation of State Medical Boards.

(11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(12) "LMCC" means the Licentiate of the Medical Council of Canada.

(13) "NBME" means the National Board of Medical Examiners.

(14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(15) "NPDB" means the National Practitioner Data Bank.

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 68.

R156-68-104. Organization - Relationship to Rule R156-1.

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

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the AOA or ACGME, for which exemption from licensure is requested under the provisions of Subsection 58-1-307(1)(c), shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of osteopathic medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(4) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic

Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical

Practice Act in violation of Subsection R156-68-502(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:
First Offense: $100-$500
Second Offense: $500-$3,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):
First Offense: $100-$5,000
Second Offense: $500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
First Offense: $500-$5,000
Second Offense: $1,500-10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the

second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) 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 in violation of Subsection R156-1-501(1):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) 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 in violation of Subsection R156-1-501(2):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) 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 in violation of Subsection R156-1-501(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) 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 in violation of Subsection R156-1-501(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) 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 in violation of Subsection R156-1-501(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(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) 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.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: osteopaths, licensing, osteopathic physician

March 9, 2012 **58-1-106(1)(a)**

Notice of Continuation March 27, 2008 **58-1-202(1)(a)**

58-68-101

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-1. Energy Assistance: General Provisions.
R195-1-1. Purpose.

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

R195-1-2. Authority.

The department shall require compliance with Title 9, Chapter 12.

R195-1-3. Definitions.

1. The following definitions apply to R195-1 through R195-8:

a. "Applicant" means any person requesting assistance under the program discussed.

b. "Assistance" means payments made to individuals under the program discussed.

c. "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.

d. "Department" means the Department of Community and Culture.

e. "Recipient" or "client" means any individual receiving assistance under the program discussed.

f. "Confidential information" means information that has limited access as provided in Section 63G-2.

g. "HEAT" means Home Energy Assistance Target program.

h. "IRS" means Internal Revenue Service.

i. "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.

j. "Vulnerability" means having to pay a home heating cost.

R195-1-4. Client Rights and Responsibilities.

1. Any client may apply or reapply at any time for the HEAT program by completing and signing an application and turning it in at the correct office.

2. If the client needs help to apply, help will be given by the local HEAT office staff.

3. HEAT workers will identify themselves.

4. The client will be treated with courtesy, dignity and respect.

5. Verification and information will be requested clearly and courteously.

6. If the client must be visited after working hours, an appointment will be made.

7. The client's home will not be entered without permission.

8. Clients may have an agency conference to talk about their case.

9. Clients may look at information concerning their case except confidential information.

10. Anyone may look at a copy of the program manuals located at any local HEAT office or the State energy Assistance Lifeline web site.

11. The client must give complete and correct information and verification.

12. The client must immediately report any address change while under the protection of the moratorium.

13. The client is responsible for repaying any overpayments of assistance.

R195-1-5. Information.

The department shall require compliance with 63G-2.

1. Client may review and copy anything in their case record unless it is confidential.

a. The Client requests for release of information shall be in writing and include:

i. the date;

ii. the name of the person receiving the information;

iii. the time period covered by the information.

b. Information classified as confidential shall not be used in a hearing.

c. Information classified as confidential shall not be used to close, deny or reduce benefits.

d. Clients may copy information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

e. The client cannot take the case record from the office.

2. Releasing information to sources other than the client.

a. Information will not be released when it is to be used for a commercial or political purpose.

b. The client's permission will be obtained before sharing any information regarding their case record.

i. Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

ii. Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

3. Information released without the client's permission.

a. Information, with the exception of confidential information, may be released without the clients permission when that information is to be used in:

i. The administration of any federal or state means-tested program.

ii. Any audit or review of expenditures in connection with the HEAT or Moratorium program.

iii. Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

4. If a case file is subpoenaed by an outside source, the State HEAT Program Manager is contacted immediately. The State Program manager will consult with the legal counsel for the Department of Community and Culture.

R195-1-6. Complaints and Conciliation.

1. Complaints

a. The client may make a complaint in person, by phone, or in writing to the local HEAT office.

b. Complaints shall be resolved as quickly as possible.

c. Responses to complaints shall be made in person, by phone or in writing.

2. Conciliation

a. The agency conference will be the conciliation mechanism.

b. Some or all of the following steps may be involved in the agency conference:

i. Contacting the client to identify the issue and barriers which may be preventing client progress.

ii. Reviewing and explaining rules which apply to the issues. These include rules about client rights and responsibilities.

iii. Exploring any alternative actions which may resolve the issues.

c. If the client fails to respond, or chooses not to cooperate in this process, documentation in the case file of attempts made to follow these steps will be considered as compliance with the requirement to attempt conciliation.

R195-1-7. Hearings.

The department shall require compliance with Title 63G-4.

1. Current Departmental Practices:

a. The department conducts hearings informally.

b. Hearings are held before a state agency.

c. Hearings may be conducted by telephone when the applicant or recipient agrees to the procedure.

d. Requests for a hearing must be in writing. Only a clear expression by the claimant to the effect that they want an opportunity to present their case is required.

e. The applicant or recipient has the option of appealing a hearing decision to either the director of the Department or to the District Court.

f. Final administrative action shall be taken within 90 days from the request for the hearing unless the client asks for a postponement of a scheduled hearing. The period of postponement can be added to the 90 days.

KEY: client rights, hearings, confidentiality of information
March 26, 2012 9-12-10
Notice of Continuation September 9, 2011

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-3. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.
R195-3-1. Energy Assistance Income Standards.

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household.

R195-3-2. Countable Income.

Countable income is gross income minus exclusions, disregards, and deductions.

R195-3-3. Unearned Income.

1. Countable unearned income is cash received by an individual for which no service is performed.

2. Sources of unearned income include the following:

a. Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;

b. Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;

c. Unemployment Compensation;

d. Strike or union benefits;

e. Veteran's benefits;

f. Child support and alimony;

g. Veteran's Educational Assistance intended for family members;

h. Trust payments;

i. Tribal fund gratuities unless excluded by law.

j. Money from sales contracts and mortgages;

k. Personal injury settlements;

l. Financial payments made by the Department of Workforce Services;

m. Income from Rental Property. If the client also manages the property, the income is earned.

n. Temporary Assistance to Needy Families (TANF)

o. Emergency Work Program (EWP)

p. Work allowances, included WHAT

q. Foster Care Payments

r. Severance pay paid out weekly.

R195-3-4. Earned Income.

1. Earned income is income in cash or in kind received by an individual for which a service is performed.

2. Sources of earned income include the following:

a. Wages, including military base pay;

b. Salaries;

c. Commissions;

d. Rent amount, when client works in return for rent;

e. Monies from self-employment including baby-sitting;

f. Tips;

g. Sale of livestock and poultry;

h. Work Study;

i. University Year for Action;

j. Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;

k. Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans.

R195-3-5. Income Exclusions.

1. The following definitions apply to this section:

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.

b. "JTPA" means Jobs Training Partnership Act.

2. The income listed below is not counted:

a. Earned income of an unemancipated household member.

b. Cash over which the household has no control.

c. Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities.

d. Reimbursements for incurred medical expenses.

e. Bona fide loans.

f. Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the Foster Grandparent Program.

g. Incentive and training expenses paid by the HEAT Self Sufficiency program.

h. Earned Income Tax Credit.

i. Financial payments from JTPA.

j. Value of Food Stamp Coupons, Food Stamp Cash Out checks, and surplus commodities donated by the U.S. Department of Agriculture.

k. Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt.

l. Interest or Dividend Income.

m. Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE.

n. Church cash assistance and voluntary cash contributions by others unless received on a regular basis.

o. Rental subsidies and relocation assistance.

p. Utility subsidies.

q. Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9).

r. Payments required by Public Law 92-203.

s. Payments required by Public Law 101-201 or Public Law 101-239(10405).

t. Payments required by Public Law 100-383.

u. Payments required by Public Law 101-426.

v. Payments required by Public Law 100-707.

R195-3-6. Income Disregard.

1. The following definition applies to this section:

a. "Disregard" means a portion of income that is not counted.

2. 20% of earned income, including self-employment earned income, will be disregarded.

3. For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

R195-3-7. Income Deductions.

1. Medical

A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

a. The client must verify the payment was made directly to a medical provider in the month prior to the month of application and that they will not be reimbursed by a third party.

b. Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

2. Child Support and Alimony

a. A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

b. The client must verify the payment was actually made directly to the custodial adult or through the court.

c. Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

R195-3-8. Self-Employment Income.

1. A self-employed person actively earns income directly from their own business, trade, or profession.

2. Self-employment income will be determined by using the previous year's tax return or as follows:

a. All gross self-employment income is counted.

i. Capital gains will be included.

ii. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.

b. The cost of doing business will be deducted.

i. Allowable business costs include:

A. labor;

B. stock;

C. raw materials;

D. seed and fertilizer;

E. interest paid toward the purchase of income producing property;

F. insurance premiums;

G. taxes paid on income producing property;

ii. Transportation costs will be allowed only if the person must move from place to place in the course of business.

iii. The following items will not be allowed as business expenses:

A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods.

B. Net losses from previous periods.

C. Federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses.

D. Depreciation.

R195-3-9. HEAT Financial Eligibility and Payment Determination.

1. All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

KEY: energy assistance, self-employment income, income eligibility, payment determination
March 26, 2012 9-12-10
Notice of Continuation June 22, 2007

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-5. Energy Assistance: Program Benefits.
R195-5-1. Program Benefits.

Each household may apply for HEAT Crisis assistance up to a maximum of $500 per utility (two separate utilities) per program year - October 1 through September 30. Any amount that adds up over $500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year must get prior approval from the State.

R195-5-2. Standard Payment Levels.

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

R195-5-3. Benefit Payments.

1. Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

R195-5-4. Split Payments.

1. If the primary heat source's payment account is current, up to 50% of the HEAT payment may be made to the client. Payment dispersements may be split only in the percentages listed below:

a. 100%
b. 50%/50%
c. 75%/25%

KEY: energy assistance, benefits
March 26, 2012 9-12-10
Notice of Continuation June 22, 2007

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-6. Energy Assistance: Eligibility Determination.
R195-6-1. Eligibility Determination.

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

R195-6-2. Acceptable Verification.

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

R195-6-3. Determination of The Primary Fuel Type.

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

R195-6-4. Date of Application.

The date of application is the date the application is accepted at the correct HEAT office.

R195-6-5. Date of Approval or Denial.

The date of approval or denial is the action date of the application including applications forwarded by Outreach workers.

R195-6-6. Date of Payment.

The payment date is the date the HEAT check is actually issued.

KEY: energy assistance
March 26, 2012 **9-12-10**
Notice of Continuation June 25, 2007

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-7. Energy Assistance: Records and Benefit Management.
R195-7-1. Records Management.

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

R195-7-2. Notification.

1. The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

2. Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

R195-7-3. Checks.

1. All HEAT payments to clients or vendors are issued by check.

2. If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

3. Lost or stolen HEAT checks.

a. The client must report a lost or stolen check within 29 days of the issuance date. A check that is reported lost or stolen 30 days or more after the issuance date will not be replaced.

b. The client may report this by telephone or in person.

c. When a report is received, the HEAT worker or supervisor should review all office information (payroll, energy screens, case file, etc) to verify the information.

d. A replacement HEAT check which is lost or stolen after the payee receives it will not be issued.

KEY: energy assistance, benefits, government documents, state HEAT office records
March 26, 2012 9-12-10
Notice of Continuation June 25, 2007

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-8. Energy Assistance: Special State Programs.
R195-8-1. Moratorium.

The department shall require compliance with Section 9-12-201.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have applied for HEAT

e. Have applied for assistance through the American Red Cross

f. Have made a good faith effort to pay their utility bill on a consistent basis during the moratorium

5. In addition they must indicate that the client meets at least one of the following criteria:

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

c. The minimum allowed monthly payment is $5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

KEY: energy assistance, energy industries
March 26, 2012 9-12-10
Notice of Continuation June 25, 2007

R277. Education, Administration.
R277-107. Educational Services Outside of Educator's Regular Employment.
R277-107-1. Definitions.

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

B. "Board" means the Utah State Board of Education.

C. "Extracurricular activities" means those activities for students recognized or sanctioned by an educational institution which may supplement or compliment, but are not part of, its required program or regular curriculum.

D. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any LEA.

F. "Private, but public education-related activity" means any type of activity for which the employee receives compensation and the principle clients are students at the school where the employee works. Such activities include:

(1) tutoring;
(2) lessons;
(3) clinics;
(4) camps; or
(5) travel opportunities.

R277-107-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

R277-107-3. LEA Responsibility.

An LEA may have policies providing for sponsorship or specific non-sponsorship of extracurricular activities or opportunities for students consistent with the provisions of this rule and the law.

R277-107-4. LEA Relationship to Activities Involving Educators.

A. An LEA may sponsor extracurricular activities or opportunities for students. Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.

B. An employee that participates in a private, but public education-related activity, is subject to the following:

(1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;

(2) the employee may not, in promoting the activity:

(a) contact students at the public schools except as permitted by this rule; or

(b) use education records or information obtained through his public employment unless the records or information are readily available to the general public.

(3) the employee may not use school time to discuss, promote, or prepare for any private activity;

(4) the employee may:

(a) offer public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time.

(b) discuss the private but public education-related activity with students or parents outside of the classroom and the regular school day;

(c) use student directories or online resources which are available to the general public; and

(d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.

C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.

D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.

E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with LEA policy.

R277-107-5. Advertising.

A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not sponsored by the public schools, that accepts paid or community advertising.

B. The advertisement may identify the activity participants and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with LEA policy.

D. Unless an activity is sponsored by the LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

E. The name of an LEA shall not be used in the advertisement except as the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

R277-107-6. Public Education Employees.

A. Public education employees shall comply with Section 63G-6-1001, Felony to accept emolument.

B. Public education employees shall comply with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

C. Consistent with Section 63G-6-1001 and Title 67, Chapter 14, public education employees shall not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for their personal or family use unless the gift is of nominal value and is for birthdays, holidays or teacher appreciation occasions consistent with school or LEA policies and the Utah Public Employees Ethics Act;

(2) in exchange or payment for advertising placed by employee; or

(3) in exchange or payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

D. Public education employees who hold Utah educator licenses shall be subject to license discipline (including license suspension or revocation) for violation of this rule and applicable provisions of Utah law.

R277-107-7. Public Education Employee/Sponsor Agreements or Contracts.

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by any LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. The employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor. The LEA shall maintain a copy in the employee's personnel file.

KEY: school personnel
March 12, 2012 **Art X Sec 3**
Notice of Continuation July 1, 2010 **53A-1-402.5**
53A-1-401(3)

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

C. "Board" means the Utah State Board of Education.

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information;

(6) completion of employee background checks; and

(7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE. This definition is effective until July 1, 2011.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2008-09 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

L. "USOE" means Utah State Office of Education.

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service. This definition becomes effective on July 1, 2011, the date when UTREx becomes available to all Utah LEAs.

N. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

O. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx as of July 1, 2011. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;

(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 7

(1) Data Clearinghouse File - final comprehensive update for prior year - Data, Assessment, and Accountability - effective until July 1, 2011;

(2) UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011.

E. July 15

(1) Adult Education - final report for prior year;

(2) Classified Personnel Report - for prior year - Business Services;

(3) Driver Education Report - for prior year - Educator Quality;

(4) ESEA Choice and Supplemental Services Report - for prior year;

(5) Fee Waivers Report - for prior year;

(6) Fire Drill Compliance Statement - for prior year;

(7) Home Schooled Students Report - for prior year;

(8) Teacher Benefits Report - for prior year;

(9) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports.

F. September 15

(1) Membership Audit Report - for prior year;

(2) Adult Education - Financial Audit for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2011;

(2) UTREx - update as of October 1 for current year - effective on July 1, 2011;

(3) YICSIS - update as of October 1 for current year.

I. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Pupil Transportation Statistics for state funding:

(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;

(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;

(4) Negotiations report - for current year.

J. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report - for prior year.

L. December 15

(1) Data Clearinghouse File - update as of December 1 for

current year - effective until July 1, 2011;

(2) Bus Driver Credentials Report - for current year - Business Services.

M. December 15 - UTREx - update as of December 1 for current year - effective on July 1, 2011.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend or state holiday in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance and Statistics at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;

(2) The signatures of the LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance and Statistics shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 7 Final Data Clearinghouse File - final comprehensive update for prior year- Data, Assessment, and Accountability - effective until July 1, 2011;

(3) July 7 UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011;

(4) November 15 CACTUS - update for current year.

R277-484-5. Official Data Source and Required LEA Compatibility.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA; and

(3) submission of data files to the U.S. Department of Education via EDEN.

C. Prior to an LEA acquiring a student information system, replacing an existing student information system, or modifying data elements in an existing student information system, an LEA shall have USOE approval to ensure that the LEA's new or modified student information system maintains compatibility with UTREx.

D. No later than October 1, 2013, all public education LEAs shall begin submitting daily updates to the USOE Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification. Failure to do so shall be a violation of Board reporting rules.

E. All public high school transcripts requested by public education post-secondary schools shall be electronically submitted to those public education post-secondary schools if the post-secondary schools are capable of receiving transcripts through the electronic transcript service designated by the USOE. This process is mandatory for all public high schools after September 1, 2013.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 4, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

R277-484-9. Disclosure of Data for Research.

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify

researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) A standardized, de-identified research data package shall be prepared each year by the USOE for qualified researchers to systematically protect individual student data.

(3) The USOE is not obligated to fill every data request and may develop procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act.

(a) In filling data requests, higher priority shall be given to requests that will help improve instruction in Utah's public schools.

(b) In filling data requests, higher priority shall be given to requests from universities, colleges, schools, faculty, students and government entities residing in Utah.

(4) A fee may be charged to prepare data or to deliver data, particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to USOE at least 10 business days prior to the public release.

B. Student information

(1) Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6), so that:

(a) the individual data is de-identified, meaning it is not possible to trace the data to an actual student.

(b) the recipient of student data shall agree to not report or publish data in a manner that discloses a student's identity. For example, reporting test scores for a race subgroup that has a count, also known as n-size, less than 10 could enable someone to identify the actual students and shall not be published.

C. Licensed educator information

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE non-disclosure agreement if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

F. The USOE may provide personally identifiable data about students or licensed educators consistent with state and federal law. Some data may be provided only if the researcher or contractor agrees to preserve the confidentiality of private and protected data.

KEY: data standards, reports, deadlines, research data requests

March 12, 2012 **Art X Sec 3**
Notice of Continuation June 2, 2008 **53A-1-401(3)**
53A-1-301(3)(d) and (e)

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 are in addition to 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 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 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. Licensing 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. An applicant that meets the eligibility requirements in R277-503-3B and is assigned to teach exclusively in an online setting shall be eligible to begin the ARL program but upon completion of the ARL program shall earn a license area of concentration that is restricted to providing instruction in an online setting.

C. 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) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s) and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district 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.

D. 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) 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.

(11) 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.

(a) The university or school district shall be responsible for final review and recommendation.

(b) 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
March 12, 2012 **Art X Sec 3**
Notice of Continuation March 15, 2012 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-507. Driver Education Endorsement.
R277-507-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.

C. "Level 1 License" means a license issued upon completion of an approved educator preparation program or an alternative preparation program or pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule.

D. "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

E. "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

F. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.

G. "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter 6, Part 2, Compact of Interstate Qualification of Educational Personnel, which is administered through NASDTEC and which provides for reciprocity of educator licences among states.

H. "USOE" means the Utah State Office of Education.

R277-507-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests the general control and supervision of the public school in the State Board of Education, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensure of educators, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-13-208 which directs the Board to establish procedures and standards to license teachers of driver education classes as driver license examiners.

B. The purpose of this rule is to establish standards and procedures for high school teachers to qualify for the driver education endorsement.

R277-507-3. Endorsement Requirements.

A. The driver education endorsement shall be added to the Level 1, 2, or 3 license provided:

(1) the individual has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following: Secondary Education, Special Education and/or School Counselor;

(2) the individual has a valid Utah automobile operator's license; and

(3) the beginning teacher has no convictions for a moving violation or chargeable accident on record for which a driver license was suspended or revoked for the two year period immediately prior to employment.

B. In order for a high school driver education teacher to be certified as a driver license examiner by the Driver License Division of the Department of Public Safety, the teacher shall first be licensed and endorsed by the USOE.

C. A high school driver education teacher shall have professional preparation which includes the following:

(1) sixteen (16) semester hours in the area of driver and safety education;

(2) of the 16 hours required:

(a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction; and

(b) a minimum of three (3) semester hours shall be selected from areas of related safety work; and

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training.

D. A high school driver education teacher after meeting the criteria of Subsection 3, shall obtain a valid and current certificate from the Driver License Division to administer knowledge and driving skills test, as required by and specified in 53A-13-208.

R277-507-4. Driver Education Program Standards.

The teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

(1) structuring, implementing, identifying and developing support materials related to regular classroom, multimedia, driving simulation, off-street multiple car driving range, and on-street experiences;

(2) assisting students in examining and clarifying their attitudes and values about safety;

(3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;

(4) understanding and explaining the interaction of all highway transportation system elements;

(5) initiating emergency procedures under varying circumstances;

(6) motor vehicle operation and on-street instruction;

(7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;

(8) understanding and explaining due process in the legal system;

(9) communicating effectively with federal, state, and local agencies concerning safety issues;

(10) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and

(11) understanding and explaining the UTAH DRIVER HANDBOOK, prepared by the Driver License Division.

R277-507-5. Endorsement Suspension.

A. The driver education endorsement shall be immediately suspended and the previously-endorsed individual shall not be allowed to teach driver education following a conviction for a moving violation, alcohol-related or chargeable accident for which an individual's driver license is suspended or revoked.

B. Once an individual's endorsement to teach has been suspended, he shall be required to maintain a driving record free of convictions for moving violations or chargeable accidents for which a driver license is suspended or revoked for a period of two years before the endorsement to teach may be reinstated.

KEY: professional education, driver education, educator licensure

December 16, 2005	**Art X Sec 3**
Notice of Continuation March 15, 2012	**53A-1-402(1)(a)**
	53A-1-401(3)
	53A-13-208

R277. Education, Administration.
R277-519. Educator Inservice Procedures and Credit.
R277-519-1. Definitions.

A. "USOE" means the Utah State Office of Education.

B. "Inservice" means training in which current teachers or individuals who have previously received a standard or basic teaching certificate may participate to renew a certificate, teach in another subject area or teach at another grade level.

C. "Courses" or "workshops" means an academic experience led and evaluated by an instructor. Courses are scheduled over several weeks duration; workshops are completed within a week. Courses and workshops require outside readings or completion of other assignments or both.

D. "Independent study" means an educational experience outside of courses or workshops. Independent study requires prior approval of the state or district professional development or inservice coordinator and a determination by that person of the requirements and credit warranted.

E. "Conference" means an educational event with a varied agenda offering a choice of sessions.

R277-519-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(a) which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators, 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 establish definitions and standards for inservice instruction especially as it relates to teacher certification.

R277-519-3. General Inservice Requirements.

A. Proposals for inservice classes shall be approved at the district level and shall include:

(1) a descriptive outline of the class;

(2) a schedule of meeting dates and times; and

(3) a professional vita of the instructor(s).

B. Approval of inservice credit may be sought by:

(1) written request from a private provider to the appropriate USOE subject specialist or school district at least two weeks prior to the beginning date of the scheduled inservice, or

(2) a request through the computerized inservice program connected to the USOE certification system.

(a) The computerized process is available in most Utah school districts and area technology centers;

(b) Such requests shall be made at least one week prior to the beginning of the scheduled inservice.

R277-519-4. Inservice Credit.

A. Credit is available in half-credit units, beginning with one-half credit and up to three credits per educational experience.

B. Upon completion of the inservice experience, credit shall be awarded as follows:

(1) Sponsor submits an alphabetized list of participants' names and social security numbers to a school district, the subject specific USOE section, or designated educational agency;

(2) Subject specific USOE sections, district inservice coordinators, or designated educational agencies shall enter the names and social security numbers of the inservice participant on the computer listing screen. This information shall then be transferred by the USOE Certification Section to the individuals' certification files.

(3) Certificates of Completion may be issued by individual school districts for teacher use, but such certificates shall not be honored by the USOE Certification Section as verification of inservice completion.

C. Credit for Specific Inservice Experiences

(1) Courses and workshops: On the semester system, seven to thirteen contact hours equals one-half credit, fourteen to twenty contact classroom hours equal one credit.

(2) Independent study: forty two hours equal one credit.

(3) Conferences: no specific credit awarded unless a conference could also satisfy the criteria for a workshop or independent study. If so, credit may be issued upon prior approval by the USOE Certification Section of the experience.

(4) Consistent with R277-519-4A, inservice credit is available in half-credit units.

KEY: teacher certification, professional competency

March 22, 1999	**Art X Sec 3**
Notice of Continuation March 15, 2012	**53A-1-402(1)(a)**
	53A-1-401(3)

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.

A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

B. "Board" means the Utah State Board of Education.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

D. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

E. "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

F. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

G. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

H. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-6.

I. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

J. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.

K. "LEA" means a school district or charter school.

L. "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1I.

M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate in education or in a field related to a content area under R277-501-1M from an accredited institution.

P. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

Q. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

R. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

S. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

T. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

U. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

V. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

W. "USOE" means the Utah State Office of Education.

R277-520-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Required Licensing.

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure

to ensure that an educator has appropriate licensure consistent with timelines provided in R277-501 may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed.

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. An elementary content specialist in Fine Arts or Physical Education shall hold a Level 1, 2, or 3 license with an elementary license area of concentration or a secondary license area of concentration with the appropriate K-12 subject/content endorsement.

D. An elementary content specialist in reading or English as a Second Language shall hold a Level 1, 2, or 3 license with an elementary license area of concentration with the appropriate subject/content endorsement or a secondary license area of concentration with the appropriate subject/content endorsement. Placing a content specialist in a setting out of the specialist's license area of concentration shall be based on exceptional circumstances and in consultation with the USOE.

E. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

F. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

G. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

H. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-11 (SAEP).

I. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.

R277-520-5. Routes to Utah Educator Licensing.

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.

B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-9.

R277-520-6. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1G, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load.

C. Teachers working under an eminence authorization shall never be considered highly qualified.

D. Local boards shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the local board.

E. The local board of education that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. A local board of education that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-7. State Qualified Teachers.

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-11 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

R277-520-8. Highly Qualified Teachers.

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

R277-520-9. School District/Charter School Specific Competency-based Licensed Teachers.

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.

(2) The employing school district shall request a school district/charter school specific competency-based 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 competency-based license for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific competency-based license 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, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a school 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 school district/charter school specific competency-based license for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the school district/charter school specific competency-based license and for the individual originally employed under the school district/charter school specific competency-based license.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. A school district/charter school may change the assignment of a school district/charter school-specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-520-10. Routes to Appropriate Endorsements for Teachers.

Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:

A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. individuals shall be properly endorsed consistent with R277-520-4 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

R277-520-11. Board-Approved Endorsement Program (SAEP).

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement and who have at least nine hours of USOE-approved university level courses shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

R277-520-12. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

KEY: educators, licenses, assignments
March 12, 2012 **Art X Sec 3**
Notice of Continuation July 1, 2010 **53A-1-401(3)**
53A-6-104(2)(a)

R277. Education, Administration.
R277-714. Dissemination of Information About Juvenile Offenders.
R277-714-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "GRAMA" means the Government Records Access and Management Act, Title 63G, Chapter 2, a Utah law designed to govern access to and control of government records.

D. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Superintendent" means the State Superintendent of Public Instruction.

R277-714-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-1003 which directs the Board to adopt rules governing the dissemination of information about juvenile offenders in the public schools.

B. The purpose of this rule is to provide procedures for LEAs to follow in notifying school personnel of offenders in their schools and for protecting the confidentiality of the information.

R277-714-3. Dissemination of Information.

A. The dissemination of any information about students among agencies and LEAs shall be consistent with FERPA and GRAMA, including applicable time periods and protection of confidential information.

B. Each LEA shall establish by written policy which staff members have authority to receive confidential information about students, depending upon the offense and the circumstances. This policy shall be approved by the LEA and available to parents and students upon request.

C. A dispute regarding the dissemination of information shall be decided in favor of a student's rights to privacy, except in the event of apparent imminent danger to persons or property.

KEY: public education, dissemination of information, juvenile offenders

March 12, 2012	**Art X Sec 3**
Notice of Continuation September 3, 2009	**53A-1-401(3)**
	53A-11-1003

R277. Education, Administration. **53A-1-401(3)**
R277-915. Work-based Learning Programs for Interns.
R277-915-1. Definitions.

A. "Board" means Utah State Board of Education.

B. "Intern" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "School-based enterprise" means businesses set up and run by supervised students learning to apply "practical" skills in the production of goods or services for sale or use by others.

E. "Work site" or "workplace" means the actual location where employment occurs for particular occupation(s), or an environment that simulates all aspects/elements of that employment, for instance school-based enterprises.

F. "Work-based learning" means activities that involve actual work experience or connect classroom learning to work.

R277-915-2. 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; by Section 53A-29-102 which provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; 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 direction to LEAs as they provide work-based learning programs and to establish criteria to be included in those polices.

R277-915-3. Mandatory LEA Policy.

A. Each LEA that has work-based learning programs that include assigning students to act as interns at off-campus sites or on-campus simulations shall establish a policy which provides procedures and criteria for at least the following issues:

(1) training for student interns, student intern supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided and identified either by the student, the program or the LEA;

(6) appropriate supervision and evaluation of the student by the LEA; and

(7) appropriate involvement and approval by the student's parents in the work-based intern program.

R277-915-4. Consistency with Law and State and LEA Board Rules and Policies.

A. The work-based intern experience shall be consistent with the provisions of the Fair Labor Standards Act, Part 570, Subpart E, 29 C.F.R.

B. Work-based intern programs shall operate consistently with Board rules and LEA polices including student transportation, credit toward graduation, attendance, and fee waivers.

KEY: public schools, intern program*
March 12, 2012 **Art X Sec 3**
Notice of Continuation February 2, 2012 **53A-29-102**

R305. Environmental Quality, Administration.
R305-1. Records Access and Management.
R305-1-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Department of Environmental Quality.

R305-1-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992, and 63A-12-104 of the Archives and Records Service Act.

R305-1-3. Allocation of Responsibilities within Entity.

(a) Each of the Divisions of the Department of Environmental Quality shall be responsible, regarding records of that Division, for responding to records requests under Part 2 of GRAMA and for responding to appeals under Section 63G-2-401 of GRAMA. The appropriate Division Director is the head of the governmental entity for purposes of 63G-2-401.

(b) The Office of Support Services shall be responsible, regarding records of the Executive Director, for responding to records requests under Part 2 of GRAMA and for responding to appeals under Section 63G-2-401 of GRAMA. The Executive Director is the head of the governmental entity for purposes of 63G-2-401.

R305-1-4. Requests for Access.

Requests for access to records of the following units of the Department of Environmental Quality should be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a reasonably specific description of the records requested. Records access forms may be obtained from any Department or Division records officer.

TABLE
DIVISION OR OFFICE RECORDS OFFICERS AND FUNCTIONS

Division or Office:	Functions:
RECORDS OFFICER Office of Support Services 168 North 1950 West P.O. Box 144810 Salt Lake City, UT 84114-4810	Executive Director personnel, budget, accounting, planning and policy development
RECORDS OFFICER Division of Air Quality 134 North 1950 West P.O. Box 144820 Salt Lake City, UT 84114-4820	Air Quality compliance, planning, and permitting
RECORDS OFFICER Division of Drinking Water 288 North 1460 West P.O. Box 144830 Salt Lake City, UT 84114-4830	Drinking Water permitting, compliance, enforcement, and planning
RECORDS OFFICER Division of Environmental Response and Remediation 134 North 1950 West P.O. Box 144840 Salt Lake City, UT 84114-4840	federal Superfund program, Utah Hazardous Waste Mitigation Program, underground storage tank regulation
RECORDS OFFICER Division of Radiation Control 168 North 1950 West P.O. Box 144850 Salt Lake City, UT 84114-4850	radiological waste management, radiation source licensure, X-ray, uranium mill tailings, and radon
RECORDS OFFICER Division of Solid and Hazardous Waste 1460 West P.O. Box 144880 Salt Lake City, UT 84114-4880	solid and hazardous waste enforcement, compliance, permitting, and planning288 North
RECORDS OFFICER Division of Water Quality 288 North 1460 West P.O. Box 144870 Salt Lake City, UT 84114-4870	water quality planning, compliance, enforcement, and permitting

Response to a request submitted to other persons within the Department of Environmental Quality may be delayed. See Subsections (2) and (6) of 63G-2-204.

R305-1-5. Record Sharing.

The entire Department of Environmental Quality shall be considered a governmental entity for purposes of the record sharing provisions of GRAMA, Section 63G-2-201 (5) (a) and Section 63G-2-206. The provisions of Section 63G-2-206 therefore need not be met if records are shared between Divisions or between a Division and the Office of Administration.

R305-1-6. Fees.

Fees may be charged for copies of records provided. Fees for photocopying will be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the Department of Environmental Quality by contacting records officers or Office of Support Services, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144810, Salt Lake City, UT 84114-4810. The Department of Environmental Quality may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R305-1-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203 (3). Requests for this waiver of fees may be made to those persons specified in R305-1-3.

R305-1-8. Requests for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Section 63G-2-202 (8). Requests for access to such records for research purposes may be made to those persons specified in R305-1-3.

R305-1-9. Requests to Amend a Record.

An individual may contest the accuracy of completeness of a document pertaining to him-her pursuant to Section 63G-2-603. Such requests should be made to those persons specified in R305-1-3.

R305-1-10. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal proceedings under the Utah Administrative Procedures Act.

R305-1-11. Time Periods Under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R305-1-12. Disclosure of Business Confidentiality Claims.

Records that are subject to a claim of confidentiality as provided in Section 63G-2-309 shall not be disclosed unless:

(a) The records are determined to be public and there is no further avenue for appeal; or

(b) The records are determined to be public and the period in which to bring an appeal or seek intervention has expired.

KEY: government documents, public records, GRAMA
1993 63G-2-204
Notice of Continuation March 13, 2012

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2011, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
March 7, 2012 19-2-104(3)(q)
Notice of Continuation April 6, 2011 19-2-108

R307. Environmental Quality, Air Quality.
R307-220. Emission Standards: Plan for Designated Facilities.
R307-220-1. Incorporation by Reference.

Pursuant to 42 U.S.C. 7411(d), the Federal Clean Air Act Section 111(d), the following sections hereby incorporate by reference the Utah plan for designated facilities. Copies of the plan are available at the Division of Air Quality and the Division of Administrative Rules.

R307-220-2. Section I, Municipal Solid Waste Landfills.

Section I, Municipal Solid Waste Landfills, as most recently adopted by the Air Quality Board on September 3, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators.

Section II, Hospital, Medical, Infectious Waste Incinerators, as most recently adopted by the Air Quality Board on March 7, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-4. Section III, Small Municipal Waste Combustion Units.

Section III, Small Municipal Waste Combustion Units, as most recently adopted by the Air Quality Board on October 2, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-5. Section IV, Coal-Fired Electric Generating Units.

Section IV, Coal-Fired Electric Generating Units, as most recently adopted by the Air Quality Board on March 14, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, landfills, incinerators, electric generating units
March 7, 2012 19-2-104(3)(q)
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste.
R307-222-1. Purpose and Applicability.

(1) R307-222 regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of them. The purpose of R307-222 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans from incinerators burning hospital, medical or infectious waste. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, Subpart Ce, published at 62 FR 48348, September 15, 1997, 40 CFR Part 60, Subpart Ce as amended on October 6, 2009, and by the Plan for Incinerators for Hospital, Medical, and Infectious Waste which is incorporated by reference at R307-220-3.

(2) Except as set forth in R307-222(2)(a) through R307-222(2)(g) R307-222 applies to each incinerator for hospital, medical, or infectious waste or any combination of them for which construction commenced on or before June 20, 1996; for which modification was commenced on or before March 16, 1998; for which construction was commenced after June 20, 1996 but no later than December 1, 2008; or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

(a) A combustor is not subject to R307-222 during periods when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them as defined in 40 CFR 60.51c is burned, provided the owner or operator of the combustor:

(i) Notifies the executive secretary of an exemption claim; and

(ii) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned.

(b) Any co-fired combustor as defined in 40 CFR 60.51c is not subject to this subpart if the owner or operator of the co-fired combustor:

(i) Notifies the executive secretary of an exemption claim;

(ii) Provides an estimate of the relative weight of wastes to be combusted, including hospital, medical or infectious waste or any combination of them, and other fuels and wastes; and

(iii) Keeps records on a calendar quarter basis of the weight of hospital, medical, or infectious waste or any combination of them which was combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under R315-306 is not subject to R307-222.

(d) Any combustor which meets the applicability requirements under Subpart Cb, Ea, or Eb of 40 CFR Part 60 is not subject to R307-222.

(e) Any pyrolysis unit as defined in 40 CFR 60.51c is not subject to R307-222.

(f) Any cement kiln firing hospital, medical, or infectious waste or any combination of them is not subject to R307-223.

(g) Physical or operational changes made to an existing hospital, medical or infectious waste incinerator unit solely for the purpose of complying with emission guidelines under R307-222 are not considered a modification and do not result in an existing hospital, medical or infectious or any combination waste incinerator unit becoming subject to the provisions of R307-210.

(3) Beginning September 15, 2000, any facility subject to R307-222 is also required to obtain an operating permit under R307-415.

R307-222-2. Definitions and References.

(1) The following definitions apply only to R307-222. Definitions found in 40 CFR 60.31e, effective as of the date referenced in R307-101-3, and 40 CFR 60.51c, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "executive secretary" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State agency" or "State regulatory agency."

(c) Substitute "Rule R307-222" for all references to "this subpart."

(d) Substitute "40 CFR Part 60" for all references to "this part."

(e) Substitute "40 CFR" for all references to "This title."

R307-222-3. All Incinerators.

Each incinerator subject to R307-222 must comply with the requirements of 40 CFR 60.52c(b) for emission limits, 40 CFR 60.53c for operator training and qualification, 40 CFR 60.54c for siting requirements, 40 CFR 60.55c for a waste management plan, 40 CFR 56c for compliance and performance testing, 40 CFR 60.57c for monitoring requirements, and 40 CFR 60.58c(b) excluding (b)(2)(ii) and (b)(7) for recordkeeping, and 40 CFR 60.58c(c) through (f) for reporting. These provisions, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-222-4. Large, Medium and Small Incinerators.

Except as provided in Section R307-222-5, each incinerator must comply with the emissions limitations of Table 1A and Table 1B in 40 CFR Part 60, Subpart Ce; 40 CFR 60.57c; and 40 CFR 60.56c, excluding 56c(b)(12) and 56c(c)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

R307-222-5. Small Rural Incinerators.

(1) A small rural incinerator is a small incinerator as defined in Section R307-222-2 that:

(a) is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area listed in OMB bulletin No. 93-17 entitled "Revised Statistical definitions for Metropolitan Areas," June 30, 1993; and

(b) burns less than 2000 pounds per week of hospital, medical or infectious waste or any combination of them. The 2000 pounds per week limitation does not apply during performance tests.

(2) Each small rural incinerator must comply with the emission limits of Table 2A and Table 2B in 40 CFR Part 60, Subpart Ce, effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(3) Each small rural incinerator must comply with the inspection requirements of 40 CFR 60.36e(a)(1) and (a)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference. An inspection meeting these requirements must be conducted within one year after federal approval of the Plan incorporated by reference in R307-220-3, and annually no more than 12 months following the previous annual inspection.

(4) Each small rural incinerator must comply with the compliance and performance testing requirements of 40 CFR 60.37e(b)(1) through (b)(5), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(5) Each small rural incinerator must comply with the monitoring requirements of 40 CFR 60.37e(d)(1) through (d)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(6) Each small rural incinerator must comply with the recordkeeping and reporting requirements of 40 CFR

60.38e(b)(1) and (b)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

KEY: air pollution, hospitals, medical incinerator, infectious waste
March 7, 2012 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major

sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page

25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO2 equivalent emissions.

(b) The term "tpy CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98--Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96), and summing the resultant value for each to compute a tpy CO2e.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing

and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable

requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this

exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) 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 distributed by a public utility.

(j) Comfort heating equipment (i.e., 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) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use,

maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under

the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive

approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive

Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for

minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional

information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire

term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, greenhouse gases, operating permit, emission fees
March 7, 2012 19-2-109.1
Notice of Continuation July 13, 2007 19-2-104

R311. Environmental Quality, Environmental Response and Remediation.
R311-200. Underground Storage Tanks: Definitions.
R311-200-1. Definitions.

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "Alternative Fuel" means a petroleum-based fuel containing:

(A) more than ten percent ethanol, or

(B) more than twenty percent biodiesel.

(3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.

(5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

(6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

(8) "Certificate" means a document that evidences certification.

(9) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.

(10) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).

(11) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(12) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(13) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(14) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).

(15) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(16) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.

(17) "Department" means the Utah Department of Environmental Quality.

(18) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(19) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(20) "EPA" means the United States Environmental Protection Agency.

(21) "Expeditiously disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.

(22) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(23) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(24) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(25) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(26) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(27) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.

(28) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(29) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(30) "No Further Action determination" means that the Executive Secretary has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(31) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(32) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(33) "Owners and operators" means either an owner or operator, or both owner and operator.

(34) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(35) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(36) "Petroleum storage tank" means a storage tank that

contains petroleum as defined by Section 19-6-402(20).

(37) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(38) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(39) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(40) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(41) "Registration fee" means underground storage tank registration fee.

(42) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(43) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(44) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(45) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(46) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(47) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(48) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

(49) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(50) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(51) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(52) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(53) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(54) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(55) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(56) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(57) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(58) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(59) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;
(E) secondary containment construction; and
(F) UST repair and service.

(60) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(61) "UST installer" means an individual who engages in underground storage tank installation.

(62) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(63) "UST remover" means an individual who engages in underground storage tank removal.

(64) "UST tester" means an individual who engages in UST testing.

(65) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

KEY: petroleum, underground storage tanks
March 9, 2012 19-6-105
Notice of Continuation April 18, 2007 19-6-403

R313. Environmental Quality, Radiation.
R313-17. Administrative Procedures.
R313-17-1. Authority.

The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205.

R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary shall give public notice of and provide an opportunity to comment on the following:

(a) A proposed major licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in Section R313-70-7.

(i) Major licensing actions include:

(A) Pending issuance of a new license,

(B) Pending issuance of a license renewal,

(C) Pending approval of a license termination,

(D) An increase in process, storage, or disposal capacity,

(E) A geographic expansion,

(F) A change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment,

(G) A decrease in environmental monitoring or sampling frequency,

(H) Pending approval of reclamation, decontamination or decommissioning plans,

(I) Pending approval of corrective actions to control or remediate existing radioactive material contamination, not already authorized by a license,

(J) A licensing issue the Executive Secretary deems is of significant public interest.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) The Executive Secretary may elect to give public notice of and provide an opportunity to comment on licensing actions that do not include the actions in Subsection R313-17-2(1)(a)(i), for all license categories identified in Section R313-70-7.

(3) Public notice shall allow at least 30 days for public comment.

(4) Public notice may describe more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(5) Public notice shall be given by one or more of the following methods:

(a) Publication in a newspaper of general circulation in the area affected by the proposed action,

(b) Publication on the Division of Radiation Control website, or

(c) Distribution by an electronic mail server.

R313-17-3. Administrative Procedures.

Administrative proceedings under the Radiation Control Act are governed by Rule R305-6.

KEY: administrative procedures, comment, hearings, adjudicative proceedings
March 19, 2012 19-3-104(4)
Notice of Continuation July 7, 2011 63G-4-102
63G-4-201 through 63G-4-205

R313. Environmental Quality, Radiation Control.
R313-35. Requirements for X-Ray Equipment Used for Non-Medical Applications.
R313-35-1. Purpose and Scope.

(1) R313-35 establishes radiation safety requirements for registrants who use electronic sources of radiation for industrial radiographic applications, analytical applications or other non-medical applications. Registrants engaged in the production of radioactive material are also subject to the requirements of R313-19 and R313-22. The requirements of R313-35 are an addition to, and not a substitution for, the requirements of R313-15, R313-16, R313-18 and R313-70.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-35-2. Definitions.

As used in R313-35:

"Analytical x-ray system" means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials by either x-ray fluorescence or diffraction analysis.

"Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure, hereinafter termed "cabinet," which, independent of existing architectural structure except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals, and similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system.

"Collimator" means a device used to limit the size, shape and direction of the primary radiation beam.

"Direct reading dosimeter" means an ion-chamber pocket dosimeter or an electronic personal dosimeter.

"External surface" means the outside surfaces of cabinet x-ray systems, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across an aperture or port.

"Fail-safe characteristics" means design features which cause beam port shutters to close, or otherwise prevent emergence of the primary beam, upon the failure of a safety or warning device.

"Nondestructive testing" means the examination of the macroscopic structure of materials by nondestructive methods utilizing x-ray sources of radiation.

"Non-medical applications" means uses of x-ray systems except those used for providing diagnostic information or therapy on human patients.

"Normal operating procedures" means instructions necessary to accomplish the x-ray procedure being performed. These procedures shall include positioning of the equipment and the object being examined, equipment alignment, routine maintenance by the registrant, and data recording procedures which are related to radiation safety.

"Open-beam configuration" means a mode of operation of an analytical x-ray system in which individuals could accidentally place some part of the body into the primary beam during normal operation if no further safety devices are incorporated.

"Portable package inspection system" means a portable x-ray system designed and used for determining the presence of explosives in a package.

"Primary beam" means ionizing radiation which passes through an aperture of the source housing via a direct path from the x-ray tube located in the radiation source housing.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in individuals receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes, minimally, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

R313-35-20. Personnel Monitoring.

Registrants using x-ray systems in non-medical applications shall meet the requirements of R313-15-502.

R313-35-30. Locking of X-ray Systems Other Than Veterinary X-Ray Systems.

The control panel of x-ray systems located in uncontrolled areas shall be equipped with a locking device that will prevent the unauthorized use of a x-ray system or the accidental production of radiation. Non-cabinet x-ray systems shall be kept locked with the key removed when not in use.

R313-35-40. Storage Precautions.

X-ray systems shall be secured to prevent tampering or removal by unauthorized personnel.

R313-35-50. Training Requirements.

In addition to the requirements of R313-18-12, an individual operating x-ray systems for non-medical applications shall be trained in the operating procedures for the x-ray system and the emergency procedures related to radiation safety for the facility. Records of training shall be made and maintained for three years after the termination date of the individual.

R313-35-60. Surveys.

In addition to the requirements of R313-15-501, radiation surveys of x-ray systems shall be performed:

(1) upon installation of the x-ray system; and

(2) following change to or maintenance of components of an x-ray system which effect the output, collimation, or shielding effectiveness.

R313-35-70. Radiation Survey Instruments.

Survey instruments used in determining compliance with R313-15 and R313-35 shall meet the following requirements:

(1) Instrumentation shall be capable of measuring a range from 0.02 millisieverts (2 millirem) per hour through 0.01 sievert (1 rem) per hour.

(2) Instrumentation shall be calibrated at intervals not to exceed 12 months and after instrument servicing, except for battery changes.

(3) For linear scale instruments, calibration shall be shown at two points located approximately one-third and two-thirds of full-scale on each scale. For logarithmic scale instruments, calibration shall be shown at mid-range of each decade, and at two points of at least one decade. For digital instruments, calibration shall be shown at three points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour.

(4) An accuracy of plus or minus 20 percent of the calibration source shall be demonstrated for each point checked pursuant to R313-35-70(3).

(5) The registrant shall perform visual and operability checks of survey instruments before use on each day the survey instrument is to be used to ensure that the equipment is in good working condition. If survey instrument problems are found,

the equipment shall be removed from service until repaired.

(6) Results of the instrument calibrations showing compliance with R313-35-70(3) and R313-35-70(4) shall be recorded and maintained for a period of three years from the date the record is made.

(7) Records demonstrating compliance with R313-35-70(5) shall be made when a problem is found. The records shall be maintained for a period of three years from the date the record is made.

R313-35-80. Cabinet X-ray Systems.

(1) The requirements as found in 21 CFR 1020.40, 1996 ed., are adopted and incorporated by reference.

(2) Individuals operating cabinet x-ray systems with conveyor belts shall be able to observe the entry port from the operator's position.

R313-35-90. Portable Package Inspection Systems.

Portable package inspection systems shall be registered in accordance with R313-16 and shall be exempt from inspection by representatives of the Executive Secretary.

R313-35-100. Analytical X-Ray Systems Excluding Cabinet X-Ray Systems.

(1) Equipment. Analytical x-ray systems not contained in cabinet x-ray systems shall meet all the following requirements.

(a) A device which prevents the entry of portions of an individual's body into the primary x-ray beam path, or which causes the beam to be shut off upon entry into its path, shall be provided for open-beam configurations.

(i) Pursuant to R313-12-55(1), an application for an exemption from R313-35-100(1)(a) shall contain the following information:

(A) a description of the various safety devices that have been evaluated;

(B) the reason that these devices cannot be used; and

(C) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(ii) applications for exemptions to R313-35-100(1)(a) shall be submitted to the Executive Secretary of the Board.

(b) Open-beam configurations shall be provided with a readily discernible indication of:

(i) the "on" or "off" status of the x-ray tube which shall be located near the radiation source housing if the primary beam is controlled in this manner; or

(ii) the "open" or "closed" status of the shutters which shall be located near ports on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so that their purpose is easily identified and the devices shall be conspicuous at the beam port. On equipment installed after July 1, 1989, warning devices shall have fail-safe characteristics.

(d) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening. Security requirements will be deemed met if the beam port cannot be opened without the use of tools that are not part of the closure.

(e) Analytical x-ray systems shall be labeled with a readily discernable sign or signs bearing a radiation symbol which meets the requirements of R313-15-901 and the words:

(i) "CAUTION-HIGH INTENSITY X-RAY BEAM," or words having a similar intent, on the x-ray tube housing; and

(ii) "CAUTION RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words having a similar intent, near switches that energize an x-ray tube.

(f) On analytical x-ray systems with open-beam configurations which are installed after July 1, 1989, ports on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

(g) An easily visible warning light labeled with the words "X-RAY ON," or words having a similar intent, shall be located near switches that energize an x-ray tube and near x-ray ports. They shall be illuminated only when the tube is energized.

(h) On analytical x-ray systems installed after July 1, 1989, warning lights shall have fail-safe characteristics.

(i) X-ray generators shall be supplied with a protective cabinet which limits leakage radiation measured at a distance of five centimeters from its surface so that they are not capable of producing a dose equivalent in excess of 2.5 microsieverts (0.25 millirem) in one hour.

(j) The components of an analytical x-ray system located in an uncontrolled area shall be arranged and include sufficient shielding or access control so that no radiation levels exist in areas surrounding the component group which could result in a dose to an individual present therein in excess of the dose limits given in R313-15-301.

(2) Personnel Requirements.

(a) An individual shall not be permitted to operate or maintain an analytical x-ray system unless the individual has received instruction which satisfies the requirements of R313-18-12(1). The instruction shall include:

(i) identification of radiation hazards associated with the use of the analytical x-ray system;

(ii) the significance of the various radiation warnings and safety devices incorporated into the analytical x-ray system, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in these cases;

(iii) proper operating procedures for the analytical x-ray system;

(iv) symptoms of an acute localized exposure; and

(v) proper procedures for reporting an actual or suspected exposure.

(b) Registrants shall maintain records which demonstrate compliance with the requirements of R313-35-100(2)(a) for a period of three years after the termination of the individual.

(c) Normal operating procedures shall be written and available to analytical x-ray system workers. An individual shall not be permitted to operate analytical x-ray systems using procedures other than those specified in the normal operating procedures unless the individual has obtained written approval of the registrant or the registrant's designee.

(d) An individual shall not bypass a safety device unless the individual has obtained the written approval of the registrant or the registrant's designee. Approval shall be for a specified period of time. When a safety device has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(3) Personnel Monitoring. In addition to the requirements of R313-15-502, finger or wrist dosimetric devices shall be provided to and shall be used by:

(a) analytical x-ray system workers using equipment having an open-beam configuration and not equipped with a safety device; and

(b) personnel maintaining analytical x-ray systems if the maintenance procedures require the presence of a primary x-ray beam when local components in the analytical x-ray system are disassembled or removed.

(4) Posting. Areas or rooms containing analytical x-ray systems not considered to be cabinet x-ray systems shall be conspicuously posted to satisfy the requirements in R313-15-902.

R313-35-110. Veterinary X-Ray Systems.

(1) Equipment. X-ray systems shall meet the following standards to be used for veterinary radiographic examinations.

(a) The leakage radiation from the diagnostic source assembly measured at a distance of one meter shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(b) Diaphragms, cones, or a stepless adjustable collimator shall be provided for collimating the useful beam to the area of clinical interest and shall provide the same degree of protection as is required of the diagnostic source housing.

(c) A device shall be provided to terminate the exposure after a preset time or exposure.

(d) A "dead-man type" exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator may stand out of the useful beam and at least six feet from the animal during x-ray exposures.

(e) For stationary or mobile x-ray systems, a method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed six percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(f) For portable x-ray systems, a method shall be provided to align the center of the x-ray field with respect to the center of the image receptor to within six percent of the source to image receptor distance, and to indicate the source to image receptor distance to within six percent.

(2) Structural shielding. For stationary x-ray systems, the wall, ceiling, and floor areas shall provide enough shielding to meet the requirements of R313-15-301.

(3) Operating procedures.

(a) Where feasible, the operator shall stand well away from the useful beam and the animal during radiographic exposures.

(b) In applications in which the operator is not located beyond a protective barrier, clothing consisting of a protective apron having a lead equivalent of not less than 0.5 millimeters shall be worn by the operator and other individuals in the room during exposures.

(c) An individual other than the operator shall not be in the x-ray room while exposures are being made unless the individual's assistance is required.

(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, for example, protective gloves and apron. The individual shall be so positioned that no unshielded part of that individual's body will be struck by the useful beam.

R313-35-120. X-Ray Systems Less than 1 MeV used for Non-Destructive Testing.

(1) Cabinet x-ray systems.

Cabinet x-ray systems shall meet the requirements of R313-35-80.

(2) Fixed Gauges.

(a) Warning Devices. A light, which is clearly visible from all accessible areas around the x-ray system, shall indicate when the x-ray system is operating.

(b) Personnel Monitoring. Notwithstanding R313-15-502(1)(a), individuals conducting x-ray system maintenance requiring the x-ray beam to be on shall be provided with and required to wear personnel monitoring devices.

(3) Industrial and Other X-ray Systems.

(a) Equipment.

(i) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(ii) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed six months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(iii) Records demonstrating compliance with R313-35-120(3)(a)(i) shall be made when problems with the equipment are found. These records shall be maintained for a period of three years.

(iv) Records demonstrating compliance with R313-35-120(3)(a)(ii) shall be made. These records shall be maintained for a period of three years.

(b) Controls. X-ray systems which produce a high radiation area shall be controlled to meet the requirements of R313-15-601.

(c) Personnel Monitoring Requirements.

(i) Registrants shall not permit individuals to conduct x-ray operations unless all of the following conditions are met.

(A) Individuals shall wear a thermoluminescent dosimeter or film badge.

(I) Each film badge or thermoluminescent dosimeter shall be assigned to and worn by only one individual.

(II) Film badges shall be replaced at periods not to exceed one month and thermoluminescent dosimeters shall be replaced at periods not to exceed three months.

(B) Individuals shall wear a direct reading dosimeter if conducting non-destructive testing at a temporary job site or in a room or building not meeting the requirements of R313-15-301.

(I) Pocket dosimeters shall have a range from zero to two millisieverts (200 millirem) and must be recharged at the beginning of each shift.

(II) Direct reading dosimeters shall be read and the exposures recorded at the beginning and end of each shift. Records shall be maintained for three years after the record is made.

(III) Direct reading dosimeters shall be checked at intervals not to exceed 12 months for correct response to radiation and the results shall be recorded. Records shall be maintained for a period three years from the date the record is made. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure.

(IV) If an individual's ion-chamber pocket dosimeter is found to be off scale or if the individual's electronic personnel dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or thermoluminescent dosimeter shall be sent for processing within 24 hours. In addition, the individual shall not resume work with sources of radiation until a determination of the individual's radiation exposure has been made.

(d) Controls. In addition to the requirements of R313-15-601, barriers, temporary or otherwise, and pathways leading to high radiation areas shall be identified in accordance with R313-15-902.

(e) Surveillance. During non-destructive testing applications conducted at a temporary job site or in a room or building not meeting the requirements of R313-15-301, the operator shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area.

R313-35-130. X-Ray Systems Greater than 1 MeV used for Non-Destructive Testing.

(1) Equipment.

(a) Individuals shall not receive, possess, use, transfer, own, or acquire a particle accelerator unless it is registered pursuant to R313-16-231.

(b) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(c) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed three months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(d) Records demonstrating compliance with R313-35-130(1)(b) shall be made when problems with the equipment are found. These records shall be maintained for a period of three years.

(e) Records demonstrating compliance with R313-35-130(1)(c) shall be made. These records shall be maintained for a period of three years.

(f) Maintenance performed on x-ray systems shall be in accordance with the manufacturer's specifications.

(g) Instrumentation, readouts and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(h) A switch on the accelerator control console shall be routinely used to turn the accelerator beam off and on. The safety interlock system shall not be used to turn off the accelerator beam, except in an emergency.

(2) Shielding and Safety Design Requirements.

(a) An individual who has satisfied a criterion listed in R313-16-400, shall be consulted in the design of a particle accelerator's installation and called upon to perform a radiation survey when the accelerator is first capable of producing radiation.

(b) Particle accelerator installations shall be provided with primary or secondary barriers which are sufficient to assure compliance with R313-15-201 and R313-15-301.

(c) Entrances into high radiation areas or very high radiation areas shall be provided with interlocks that shut down the machine under conditions of barrier penetration.

(d) When a radiation safety interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting controls first at the position where the interlock has been tripped, and then at the main control console.

(e) Safety interlocks shall be on separate electrical circuits which shall allow their operation independently of other safety interlocks.

(f) Safety interlocks shall be fail-safe. This means that they must be designed so that defects or component failures in the interlock system prevent operation of the accelerator.

(g) The registrant may apply to the Executive Secretary for approval of alternate methods for controlling access to high or very high radiation areas. The Executive Secretary may approve the proposed alternatives if the registrant demonstrates that the alternative methods of control will prevent unauthorized entry into a high or very high radiation area, and the alternative method does not prevent individuals from leaving a high or very high radiation area.

(h) A "scram" button or other emergency power cutoff switch shall be located and easily identifiable in high radiation areas or in very high radiation areas. The cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.

(i) Safety and warning devices, including interlocks, shall be checked for proper operation at intervals not to exceed three months, and after maintenance on the safety and warning devices. Results of these tests shall be maintained for inspection at the accelerator facility for three years.

(j) A copy of the current operating and emergency procedures shall be maintained at the accelerator control panel.

(k) Locations designated as high radiation areas or very high radiation areas and entrances to locations designated as high radiation areas or very high radiation areas shall be equipped with easily observable flashing or rotating warning lights that operate when radiation is being produced.

(l) High radiation areas or very high radiation areas shall have an audible warning device which shall be activated for 15 seconds prior to the possible creation of the high radiation area or the very high radiation area. Warning devices shall be clearly discernible in high radiation areas or in very high radiation areas. The registrant shall instruct personnel in the vicinity of the particle accelerator as to the meaning of this audible warning signal.

(m) Barriers, temporary or otherwise, and pathways leading to high radiation areas or very high radiation areas shall be identified in accordance with R313-15-902.

(3) Personnel Requirements.

(a) Registrants shall not permit individuals to act as particle accelerator operators until the individuals have complied with the following:

(i) been instructed in radiation safety; and

(ii) been instructed pursuant to R313-35-50 and the applicable requirements of R313-15.

(iii) Records demonstrating compliance with R313-35-130(3)(a)(i) and R313-35-130(3)(a)(ii) shall be maintained for a period of three years from the termination date of the individual.

(b) Registrants shall not permit an individual to conduct x-ray operations unless the individual meets the personnel monitoring requirements of R313-35-120(3)(c).

(4) Radiation Monitoring Requirements.

(a) At particle accelerator facilities, there shall be available appropriate portable monitoring equipment which is operable and has been calibrated for the radiations being produced at the facility. On each day the particle accelerator is to be used, the portable monitoring equipment shall be tested for proper operation.

(b) When changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, a radiation protection survey shall be performed and documented by an individual who has satisfied a criterion listed in R313-16-400 or the individual designated as being responsible for radiation safety.

(c) Records of radiation protection surveys, calibrations, and instrumentation tests shall be maintained at the accelerator facility for inspection by representatives of the Board or the Executive Secretary for a period of three years.

R313-35-140. Duties and Authorities of a Radiation Safety Officer.

Facilities operating x-ray systems under R313-35-130 shall appoint a Radiation Safety Officer. The specific duties and authorities of the Radiation Safety Officer include, but are not limited to:

(1) establishing and overseeing all operating, emergency, and ALARA procedures as required by R313-15;

(2) ensuring that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the registrant's program;

(3) overseeing and approving the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;

(4) ensuring that required radiation surveys are performed and documented in accordance with the R313-35-130(4);

(5) ensuring that personnel monitoring devices are

calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by R313-15-1203; and

(6) ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-304. Industrial Solid Waste Landfill Requirements.
R315-304-1. Applicability.

(1) The requirements of Rule R315-304 apply to each Class III Landfill as specified.

(2) The requirements of Rule R315-304 do not apply to the following materials managed at an industrial facility:

(a) fly ash waste, bottom ash waste, slag waste, or flue gas emission control dust generated primarily from the combustion of coal or other fossil fuels;

(b) wastes from the extraction, beneficiation, and processing of ores and minerals;

(c) electric arc furnace slag, open hearth furnace slag, and other slags generated during carbon steel production; and

(d) cement kiln dust.

R315-304-2. Industrial Landfill Standards for Performance.

Each Class III Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IIIb Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, excluding Subsections R315-2-4(b)(3), (4), (5), (7), and (14), unless approved by the Executive Secretary; or

(b) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

R315-304-4. Industrial Landfill Location Standards.

(1) Class IIIa Landfills.

(a) A new Class IIIa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IIIa Landfill that is proposed on the site of generation of the industrial solid waste or a lateral expansion of an existing Class IIIa Landfill, shall meet the location standards of Subsections R315-302-1(2)(b), (c), (d), and (e) with respect to geology, surface water, wetlands, and ground water.

(c) An existing Class IIIa Landfill shall not be subject to the location standards of Subsection R315-302-1(2).

(d) An exemption from any location standard of Subsection R315-302-1(2), except the standards for floodplains and wetlands, may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(2) Class IIIb Landfills.

(a) A new Class IIIb landfill or a lateral expansion of an existing Class IIIb Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B); and

(iv) the requirements of Subsection R315-302-1(2)(f).

(b) For a lateral expansion of an existing Class IIIb Landfill, an exemption from any location standard of Subsection R315-304-4(2)(a) may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring, or operation than the minimum described in Rule R315-304 to protect human health or the environment.

(c) An existing Class IIIb Landfill shall not be subject to the location standards of Subsection R315-304-4(2)(a).

R315-304-5. Industrial Landfill Requirements.

(1) Each Class III Landfill shall meet the following applicable requirements, as determined by the Executive Secretary:

(a) the plan of operation requirements of Subsections R315-302-2(2)(a), (b), (c), (d), (g), (i), (j), (k), (l), (m), (n), and (o);

(b) the recordkeeping requirements of Subsections R315-302-2(3)(a), (b)(i), (iii), (iv), and (vi);

(c) the reporting requirements of Subsection R315-302-2(4); and

(d) the inspection requirements of Subsection R315-302-2(5).

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care of Subsections R315-302-2(6); R315-302-3(2); (3); (4)(a), and (b); (5); (6)(a)(iv) through (vi), (6)(b), and (c); and (7)(a) as determined by the Executive Secretary.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3(4).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5)(b).

(c) If a Class III Landfill is already subject to the closure and post-closure requirements of another Federal or state agency which are as stringent as specified in Subsections R315-304-5(2)(a) or (b), the landfill may be exempt, upon approval of the Executive Secretary, from the closure requirements of Subsections R315-304-5(2)(a) or (b).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall design the landfill to minimize the acceptance of liquids and control storm water run-on/run-off as specified in Subsections R315-303-3(1)(b), (c), and (d).

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of Subsections R315-303-3(7)(a), (c), (e), (f), (g), (h), and (i) as determined by the Executive Secretary.

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the Executive Secretary, from the ground water monitoring requirements of Rule R315-308.

(c) A Class IIIb Landfill is exempt from the ground water

monitoring requirements of Rule R315-308.

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsections R315-303-4(2)(f) and R315-303-4(6); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Subsections R315-305-4(7) and R315-305-5(2) through (4) as determined by the Executive Secretary.

(6) Financial Assurance.

(a) The owner or operator of each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class III Landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the landfill as required by another Federal or state agency which is as stringent as the requirements of Rule R315-309, the landfill may be exempt, upon approval of the Executive Secretary, from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

Each Class III Landfill shall apply for and obtain a permit to operate by meeting the applicable requirements of Rule R315-310.

KEY: solid waste management, waste disposal
February 1, 2007 19-6-105
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40 CFR 257

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-1A. Statement of Intent.

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-1C. Triennial Review.

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Executive Secretary will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Executive Secretary will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the Division of Administrative Rules' rulemaking procedures.

R317-2-2. Scope.

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-.3.5.b.4., and where best management practices will be employed to minimize pollution effects. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required

where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse affects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Executive Secretary shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries,

such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, 2008, and 2011 reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not to exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

a. Bioaccumulation in fish tissues or wildlife,

b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,

c. Potential human exposure to pollutants resulting from drinking water or recreational activities,

d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.

e. Toxicity of the substance discharged,

f. Zone of passage for migrating fish or other species (including access to tributaries), or

g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these regulations for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis. Site-specific criterion may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or un-alterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criterion.

7.2 Narrative Standards

It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Utah Division of Water Quality by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

1. Category 2 Waters as listed in R317-2-12.2.

2. Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from Main Street in Coalville to headwaters.

Weber River and tributaries, from Utah State Route 32 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Haight Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Haight Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

R317-2-13. Classification of Waters of the State (see R317-2-6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell, except as listed below		2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park, except as listed below	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A	3A	4
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C	4
Quitchupah Creek and Tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
San Juan River and Tributaries, from Lake Powell to state line except As listed below:	1C	2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
Spring Creek and tributaries, from confluence with Vega				

Creek to headwaters		2B	3A		4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A		4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A		3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A		4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A		4
LaSal Creek and tributaries, from state line to headwaters		2B	3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A		3B	4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B		3C	4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B		3C	4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir		2B		3C	4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B		3C	4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing		2B		3C	4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course		2B		3C	4
Except as listed below Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake.		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
White River and tributaries, from confluence with Green River to state line, except as listed below		2B	3B		4
Bitter Creek and Tributaries from White River to Headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B		4
Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing		2B	3B		4
Uinta River and tributaries, From Highway US-4- crossing to headwaters		2B	3A		4
Power House Canal from Confluence with Uinta River to headwaters		2B	3A		4
Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A		4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A		4

Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B		4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A		4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B		4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A		4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A		
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A		4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:	2A		3A		4
Sears Creek and tributaries, Daggett County		2B	3A		
Tolivers Creek and tributaries, Daggett County		2B	3A		
Red Creek and tributaries, from confluence with Green River to state line		2B		3C	4
Jackson Creek and tributaries, Daggett County		2B	3A		
Davenport Creek and tributaries, Daggett County		2B	3A		
Goslin Creek and tributaries, Daggett County		2B	3A		
Gorge Creek and tributaries, Daggett County		2B	3A		
Beaver Creek and tributaries, Daggett County		2B	3A		
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A		
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A		4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B		3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A		
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A		4

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B		4
Virgin River and tributaries from state line to Quail Creek diversion except as listed below		2B	3B		4
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B		4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A		4
Leed's Creek, from confluence with Quail Creek to headwaters		2B	3A		4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A		4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A		4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B	3A		4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B		3C	4
North Fork Virgin River and tributaries	1C	2A	3A		4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A		4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A		4

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B		3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A		4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B		3C	4
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A		4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D	4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A		4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B		3C	4
Box Elder Creek, from Brigham					

City Reservoir (the Mayor's Pond) to headwaters		2B	3A	4
Salt Creek, from confluence with Bear River to Crystal Hot Springs		2B	3B 3D	
Malad River and tributaries, from confluence with Bear River to state line		2B	3C	
Little Bear River and tributaries, from Cutler Reservoir to headwaters		2B 3A	3D	4
Logan River and tributaries, from Cutler Reservoir to headwaters		2B 3A	3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B 3A		4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B 3A		4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B 3A		4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B 3A		4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B 3A		4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B	4
High Creek and tributaries, from confluence with Cub River to headwaters		2B 3A		4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B 3A		4
Swan Springs tributary to Swan Creek	1C	2B 3A		
Bear River and tributaries in Rich County		2B 3A		4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B 3A		4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B 3A		4

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B 3A		4
Weber River, from Great Salt Laketo Slaterville diversion, except as listed below:		2B	3C 3D	4
Four Mile Creek from I-15 To headwaters		2B 3A		4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B 3A		4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below	2A	3A		4
Wheeler Creek from Confluence with Ogden River to headwaters	1C	2B 3A		4
All tributaries to Pineview Reservoir	1C	2B 3A		4
Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B 3A		
Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C	2B 3A		4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B 3A		4

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B * 3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B * 3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *	4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B * 3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B 3A		4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B	4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B 3A		
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B 3A		
Red Butte Creek and tributaries from Liberty Park pond inlet to Red Butte Reservoir		2B 3A		4
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B 3A		
Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters		2B 3A		4
Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir	1C	2B 3A		
Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B 3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B	3C	4
Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters		2B 3A		4

Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A		4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A		
Deaf Smith Canyon Creek and tributaries	1C	2B	3A		4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A		4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A		
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B	3A		
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B		3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B		3D	

* Site specific criteria for dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion		2B	3A		4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below	1C	2B	3A		4
Upper Falls drainage above Provo City diversion	1C	2B	3A		
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A		
Lost Creek and tributaries above Provo City diversion	1C	2B	3A		

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A		4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A		4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B	3A		4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B		3B	4
Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters		2B		3B	4
Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge		2B		3B	4
Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way		2B		3B	4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters		2B		3D	4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters		2B	3A		4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way		2B		3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek		2B	3A		4
Hobble Creek and tributaries, from Utah Lake to headwaters		2B	3A		4
Dry Creek and tributaries from Utah Lake (Provo Bay) to Highway-US 89		2B		3E	4
Dry Creek and tributaries from Highway-US 89 to headwaters		2B	3A		4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction		2B		3B 3D	4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters		2B	3A		4
Benjamin Slough and tributaries from Utah Lake to headwaters, except as listed below		2B		3B	4
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters		2B		3C	4
Salt Creek, from Nephi diversion to headwaters		2B	3A		4
Currant Creek, from mouth of Goshen Canyon to Mona Reservoir		2B	3A		4
Burriston Creek, from Mona Reservoir to headwaters		2B	3A		4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters		2B	3A		4
Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters		2B	3A		4

All other permanent streams entering Utah Lake	2B	3B		4

13.6 Sevier River Basin
a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below	2B		3C	4
Beaver River and tributaries from Minersville City to headwaters	2B	3A		4
Little Creek and tributaries, From irrigation diversion to Headwaters	2B	3A		4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters	2B	3A		4
Coal Creek and tributaries	2B	3A		4
Summit Creek and tributaries	2B	3A		4
Parowan Creek and tributaries	2B	3A		4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:	2B	3A		4
Pioneer Creek and tributaries, Millard County	2B	3A		4
Chalk Creek and tributaries, Millard County	2B	3A		4
Meadow Creek and tributaries, Millard County	2B	3A		4
Corn Creek and tributaries, Millard County	2B	3A		4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except as listed below	2B		3B	4
Oak Creek and tributaries, Millard County	2B	3A		4
Round Valley Creek and tributaries, Millard County	2B	3A		4
Judd Creek and tributaries, Juab County	2B	3A		4
Meadow Creek and tributaries, Juab County	2B	3A		4
Cherry Creek and tributaries Juab County	2B	3A		4
Tanner Creek and tributaries, Juab County	2B		3E	4
Baker Hot Springs, Juab County	2B		3D	4
Chicken Creek and tributaries, Juab County	2B	3A		4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:	2B		3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
Six Mile Creek and tributaries, Sanpete County	2B	3A		4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters	2B	3A		4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters	2B	3A		4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters	2B	3A		4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters	2B	3A		4
Sevier River and tributaries, from Annabella diversion to headwaters	2B	3A		4
Monroe Creek and tributaries, from diversion to headwaters	2B	3A		4
Little Creek and tributaries, from irrigation diversion to headwaters	2B	3A		4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters	2B	3A		4
Coal Creek and tributaries	2B	3A		4
Summit Creek and tributaries	2B	3A		4
Parowan Creek and tributaries	2B	3A		4
Duck Creek and tributaries	1C	2B	3A	4

13.7 Great Salt Lake Basin
a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County	2B	3A		4
Muddy Creek and tributaries, Box Elder County	2B	3A		4
Dove Creek and tributaries, Box Elder County	2B	3A		4
Pine Creek and tributaries, Box Elder County	2B	3A		4
Rock Creek and tributaries, Box Elder County	2B	3A		4
Fisher Creek and tributaries, Box Elder County	2B	3A		4
Dunn Creek and tributaries, Box Elder County	2B	3A		4
Indian Creek and tributaries, Box Elder County	2B	3A		4
Tenmile Creek and tributaries, Box Elder County	2B	3A		4
Curlew (Deep) Creek, Box Elder County	2B	3A		4
Blue Creek and tributaries, from				

Great Salt Lake to Blue Creek Reservoir		2B	3D	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters		2B	3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B	3A	4
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
North Willow Creek and tributaries, Tooele County		2B	3A	4
South Willow Creek and tributaries, Tooele County		2B	3A	4
Hickman Creek and tributaries, Tooele County		2B	3A	4
Barlow Creek and tributaries, Tooele County		2B	3A	4
Clover Creek and tributaries, Tooele County		2B	3A	4
Faust Creek and tributaries, Tooele County		2B	3A	4
Vernon Creek and tributaries, Tooele County		2B	3A	4
Ophir Creek and tributaries, Tooele County		2B	3A	4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B	3A	4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A	4
Middle Canyon Creek and tributaries, Tooele County		2B	3A	4
Tank Wash and tributaries, Tooele County		2B	3A	4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A	4
Thomas Creek and tributaries, Juab County		2B	3A	4
Indian Farm Creek and tributaries, Juab County		2B	3A	4
Cottonwood Creek and tributaries, Juab County		2B	3A	4
Red Cedar Creek and tributaries, Juab County		2B	3A	4
Granite Creek and tributaries, Juab County		2B	3A	4
Trout Creek and tributaries, Juab County		2B	3A	4
Birch Creek and tributaries, Juab County		2B	3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A	4
Cold Spring, Juab County		2B	3C 3D	
Cane Spring, Juab County		2B	3C 3D	
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B	3A	4
Snake Creek and tributaries, Millard County		2B	3B	4
Salt Marsh Spring Complex, Millard County		2B	3A	
Twin Springs, Millard County		2B	3B	
Tule Spring, Millard County		2B	3C 3D	
Coyote Spring Complex, Millard County		2B	3C 3D	
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B	3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B	3A	4
Shoal Creek and tributaries, Iron County		2B	3A	4

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B	3A	4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Snow Creek and tributaries		2B	3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15		2B	3C	4
Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89		2B	3B	4
Baer Creek and tributaries, from Highway US-89 to headwaters	1C	2B	3A	4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B	4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A	4

Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B	3A	4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A	4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B	3A	4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3A	4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B	4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Howard Slough		2B	3C	4
Hooper Slough		2B	3C	4
Willard Slough		2B	3C	4
Willard Creek to Headwaters	1C	2B	3A	4
Chicken Creek to Headwaters	1C	2B	3A	4
Cold Water Creek to Headwaters	1C	2B	3A	4
One House Creek to Headwaters	1C	2B	3A	4
Garner Creek to Headwaters	1C	2B	3A	4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A	4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Birch Creek and tributaries, from state line to headwaters		2B	3A	4
Pole Creek and tributaries, from state line to headwaters		2B	3A	4
Goose Creek and tributaries		2B	3A	4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A	4
Meadow Creek and tributaries, from state line to headwaters		2B	3A	4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B, 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D	
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Brown's Park Waterfowl Management Area, Daggett County	2B	3A	3D	
Clear Lake Waterfowl Management Area, Millard County	2B	3C	3D	
Desert Lake Waterfowl Management Area, Emery County	2B	3C	3D	
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties	2B	3C	3D	
Farmington Bay				
Open Water below approximately 4,208 ft.				5D
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Fish Springs National Wildlife Refuge, Juab County	2B	3C	3D	
Harold Crane Waterfowl Management Area, Box Elder County	2B	3C	3D	
Gilbert Bay				
Open Water below approximately 4,208 ft.				5A
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Gunnison Bay				
Open Water below approximately 4,208 ft.				5B
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Howard Slough Waterfowl Management Area, Weber County	2B	3C	3D	
Locomotive Springs Waterfowl Management Area, Box Elder County	2B	3B	3D	
Ogden Bay Waterfowl Management Area, Weber County	2B	3C	3D	
Ouray National Wildlife Refuge, Uintah County	2B	3B	3D	

Powell Slough Waterfowl Management Area, Utah County	2B	3C	3D	
Public Shooting Grounds Waterfowl Management Area, Box Elder County	2B	3C	3D	
Salt Creek Waterfowl Management Area, Box Elder County	2B	3C	3D	
Stewart Lake Waterfowl Management Area, Uintah County	2B	3B	3D	
Timpie Springs Waterfowl Management Area, Tooele County	2B	3B	3D	

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir	2B	3A			4
Manderfield Reservoir	2B	3A			4
LaBaron Reservoir	2B	3A			4
Kent's Lake	2B	3A			4
Minersville Reservoir	2B	3A		3D	4
Puffer Lake	2B	3A			
Three Creeks Reservoir	2B	3A			4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)	2B	3B	3D		4
Etna Reservoir	2B	3A			4
Lynn Reservoir	2B	3A			4
Mantua Reservoir	2B	3A			4
Willard Bay Reservoir	1C	2A	3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir		2A	3A		4
Newton Reservoir		2B	3A		4
Porcupine Reservoir		2B	3A		4
Pelican Pond		2B	3B		4
Tony Grove Lake		2B	3A		4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A		4
Olsen Pond		2B	3B		4
Scofield Reservoir	1C	2B	3A		4

e. Daggett County

TABLE

Browne Reservoir		2B	3A		4
Daggett Lake		2B	3A		4
Flaming Gorge Reservoir (Utah portion)	1C	2A	3A		4
Long Park Reservoir	1C	2B	3A		4
Sheep Creek Reservoir		2B	3A		4
Spirit Lake		2B	3A		4
Upper Potter Lake		2B	3A		4

f. Davis County

TABLE

Farmington Ponds		2B	3A		4
Kaysville Highway Ponds		2B	3A		4
Holmes Creek Reservoir		2B	3B		4

g. Duchesne County

TABLE

Allred Lake		2B	3A		4
Atwine Lake		2B	3A		4
Atwood Lake		2B	3A		4
Betsy Lake		2B	3A		4
Big Sandwash Reservoir	1C	2B	3A		4
Bluebell Lake		2B	3A		4
Brown Duck Reservoir		2B	3A		4
Butterfly Lake		2B	3A		4
Cedarview Reservoir		2B	3A		4
Chain Lake #1		2B	3A		4
Chepeta Lake		2B	3A		4
Clements Reservoir		2B	3A		4
Cleveland Lake		2B	3A		4
Cliff Lake		2B	3A		4
Continent Lake		2B	3A		4
Crater Lake		2B	3A		4
Crescent Lake		2B	3A		4
Daynes Lake		2B	3A		4
Dean Lake		2B	3A		4
Doll Lake		2B	3A		4
Drift Lake		2B	3A		4
Elbow Lake		2B	3A		4
Farmer's Lake		2B	3A		4
Fern Lake		2B	3A		4
Fish Hatchery Lake		2B	3A		4
Five Point Reservoir		2B	3A		4
Fox Lake Reservoir		2B	3A		4
Governor's Lake		2B	3A		4
Granddaddy Lake		2B	3A		4
Hoover Lake		2B	3A		4
Island Lake		2B	3A		4
Jean Lake		2B	3A		4
Jordan Lake		2B	3A		4

Kidney Lake	2B	3A	4
Kidney Lake West	2B	3A	4
Lily Lake	2B	3A	4
Midview Reservoir (Lake Boreham)	2B	3B	4
Milk Reservoir	2B	3A	4
Mirror Lake	2B	3A	4
Mohawk Lake	2B	3A	4
Moon Lake	1C 2A	3A	4
North Star Lake	2B	3A	4
Palisade Lake	2B	3A	4
Pine Island Lake	2B	3A	4
Pinto Lake	2B	3A	4
Pole Creek Lake	2B	3A	4
Potter's Lake	2B	3A	4
Powell Lake	2B	3A	4
Pyramid Lake	2A	3A	4
Queant Lake	2B	3A	4
Rainbow Lake	2B	3A	4
Red Creek Reservoir	2B	3A	4
Rudolph Lake	2B	3A	4
Scout Lake	2A	3A	4
Spider Lake	2B	3A	4
Spirit Lake	2B	3A	4
Starvation Reservoir	1C 2A	3A	4
Superior Lake	2B	3A	4
Swasey Hole Reservoir	2B	3A	4
Taylor Lake	2B	3A	4
Thompson Lake	2B	3A	4
Timothy Reservoir #1	2B	3A	4
Timothy Reservoir #6	2B	3A	4
Timothy Reservoir #7	2B	3A	4
Twin Pots Reservoir	1C	2B 3A	4
Upper Stillwater Reservoir	1C	2B 3A	4
X - 24 Lake	2B	3A	4

h. Emery County

TABLE

Cleveland Reservoir	2B	3A	4
Electric Lake	2B	3A	4
Huntington Reservoir	2B	3A	4
Huntington North Reservoir	2A	3B	4
Joe's Valley Reservoir	2A	3A	4
Millsite Reservoir	1C 2A	3A	4

i. Garfield County

TABLE

Barney Lake	2B	3A	4
Cyclone Lake	2B	3A	4
Deer Lake	2B	3A	4
Jacob's Valley Reservoir	2B	3C 3D	4
Lower Bowns Reservoir	2B	3A	4
North Creek Reservoir	2B	3A	4
Panguitch Lake	2B	3A	4
Pine Lake	2B	3A	4
Oak Creek Reservoir (Upper Bowns)	2B	3A	4
Pleasant Lake	2B	3A	4
Posey Lake	2B	3A	4
Purple Lake	2B	3A	4
Raft Lake	2B	3A	4
Row Lake #3	2B	3A	4
Row Lake #7	2B	3A	4
Spectacle Reservoir	2B	3A	4
Tropic Reservoir	2B	3A	4
West Deer Lake	2B	3A	4
Wide Hollow Reservoir	2B	3A	4

j. Iron County

TABLE

Newcastle Reservoir	2B	3A	4
Red Creek Reservoir	2B	3A	4
Yankee Meadow Reservoir	2B	3A	4

k. Juab County

TABLE

Chicken Creek Reservoir	2B	3C 3D	4
Mona Reservoir	2B	3B	4
Sevier Bridge (Yuba) Reservoir	2A	3B	4

l. Kane County

TABLE

Navajo Lake	2B	3A	4

m. Millard County

TABLE

DMAD Reservoir	2B	3B	4
Fools Creek Reservoir	2B	3C 3D	4
Garrison Reservoir (Pruess Lake)	2B	3B	4
Gunnison Bend Reservoir	2B	3B	4

n. Morgan County

TABLE

East Canyon Reservoir	1C 2A	3A	4
Lost Creek Reservoir	1C	2B 3A	4

o. Piute County

TABLE

Barney Reservoir		2B	3A	4
Lower Boxcreek Reservoir		2B	3A	4
Manning Meadow Reservoir		2B	3A	4
Otter Creek Reservoir		2B	3A	4
Piute Reservoir		2B	3A	4
Upper Boxcreek Reservoir		2B	3A	4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A		3A	4
Birch Creek Reservoir		2B	3A	4
Little Creek Reservoir		2B	3A	4
Woodruff Creek Reservoir		2B	3A	4

q. Salt Lake County

TABLE

Decker Lake		2B	3B	3D	4
Lake Mary	1C	2B	3A		
Little Dell Reservoir	1C	2B	3A		
Mountain Dell Reservoir	1C	2B	3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B	3A		4
Dark Canyon Lake	1C	2B	3A		4
Ken's Lake		2B	3A**		4
Lake Powell (Utah portion)	1C	2A		3B	4
Lloyd's Lake	1C	2B	3A		4
Monticello Lake		2B	3A		4
Recapture Reservoir		2B	3A		4

s. Sanpete County

TABLE

Duck Fork Reservoir		2B	3A		4
Fairview Lakes	1C	2B	3A		4
Ferron Reservoir		2B	3A		4
Lower Gooseberry Reservoir	1C	2B	3A		4
Gunnison Reservoir		2B		3C	4
Island Lake		2B	3A		4
Miller Flat Reservoir		2B	3A		4
Ninemile Reservoir		2B	3A		4
Palisade Reservoir	2A		3A		4
Rolfson Reservoir		2B		3C	4
Twin Lakes		2B	3A		4
Willow Lake		2B	3A		4

t. Sevier County

TABLE

Annabella Reservoir		2B	3A		4
Big Lake		2B	3A		4
Farnsworth Lake		2B	3A		4
Fish Lake		2B	3A		4
Forsythe Reservoir		2B	3A		4
Johnson Valley Reservoir		2B	3A		4
Koosharem Reservoir		2B	3A		4
Lost Creek Reservoir		2B	3A		4
Redmond Lake		2B		3B	4
Rex Reservoir		2B	3A		4
Salina Reservoir		2B	3A		4
Sheep Valley Reservoir		2B	3A		4

u. Summit County

TABLE

Abes Lake		2B	3A		4
Alexander Lake		2B	3A		4
Amethyst Lake		2B	3A		4
Beaver Lake		2B	3A		4
Beaver Meadow Reservoir		2B	3A		4
Big Elk Reservoir		2B	3A		4
Blanchard Lake		2B	3A		4
Bridger Lake		2B	3A		4
China Lake		2B	3A		4
Cliff Lake		2B	3A		4
Clyde Lake		2B	3A		4
Coffin Lake		2B	3A		4
Cuberant Lake		2B	3A		4
East Red Castle Lake		2B	3A		4
Echo Reservoir	1C	2A		3A	4
Fish Lake		2B	3A		4
Fish Reservoir		2B	3A		4
Haystack Reservoir #1		2B	3A		4
Henry's Fork Reservoir		2B	3A		4
Hoop Lake		2B	3A		4
Island Lake		2B	3A		4
Island Reservoir		2B	3A		4
Jesson Lake		2B	3A		4
Kamas Lake		2B	3A		4
Lily Lake		2B	3A		4
Lost Reservoir		2B	3A		4
Lower Red Castle Lake		2B	3A		4
Lyman Lake	2A		3A		4
Marsh Lake		2B	3A		4
Marshall Lake		2B	3A		4

McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C 2A		3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4
Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A	4
Bottle Hollow Reservoir		2B	3A	4
Brough Reservoir		2B	3A	4
Calder Reservoir		2B	3A	4
Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C 2A		3A	4
Steinaker Reservoir	1C 2A		3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Big East Lake		2B	3A	4
Salem Pond		2A	3A	4
Silver Flat Lake Reservoir		2B	3A	4
Tibble Fork Resevoir		2B	3A	4
Utah Lake		2B	3B 3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C 2A		3A	4
Jordanelle Reservoir	1C 2A		3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C 2A		3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C 2A		3B	4
Sand Hollow Reservoir	1C 2A		3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake		2B	3A	4
Cook Lake		2B	3A	4
Donkey Reservoir		2B	3A	4
Fish Creek Reservoir		2B	3A	4
Mill Meadow Reservoir		2B	3A	4
Raft Lake		2B	3A	4

bb. Weber County

TABLE

Causey Reservoir		2B	3A	4
Pineview Reservoir	1C 2A		3A	4

** Denotes site-specific temperature, see Table 2.14.2 Notes

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source	Recreation and Aesthetics		Agri-culture
	1C	2A	2B	4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
	RADIOLOGICAL			
(MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta	4 mrem/yr	Radium 226, 228		
(Combined)	5			
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	

FOOTNOTES:

(1) Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek:
3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek toU-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10:
3,800 mg/l provided that total sulfate not exceed
2,000 mg/l to protect the livestock watering agricultural existing use;
Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond
Slough Stream to US 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to

non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife 3A	3B	3C	3D
PHYSICAL				
Total Dissolved Gases	(1)	(1)		
Minimum Dissolved Oxygen (MG/L) (2)(2a)				
30 Day Average	6.5	5.5	5.0	5.0
7 Day Average	9.5/5.0	6.0/4.0		
Minimum	8.0/4.0	5.0/3.0	3.0	3.0
Max. Temperature(C)(3)	20	27	27	
Max. Temperature Change (C)(3)	2	4	4	
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)	10	10	15	15
METALS (4) (DISSOLVED, UG/L)(5)				
Aluminum				
4 Day Average (6)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
4 Day Average	150	150	150	150
1 Hour Average	340	340	340	340
Cadmium (7)				
4 Day Average	0.25	0.25	0.25	0.25
1 Hour Average	2.0	2.0	2.0	2.0
Chromium (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent) (7)				
4 Day Average	74	74	74	74
1 Hour Average	570	570	570	570
Copper (7)				
4 Day Average	9	9	9	9
1 Hour Average	13	13	13	13
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000
Lead (7)				
4 Day Average	2.5	2.5	2.5	2.5
1 Hour Average	65	65	65	65
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
Nickel (7)				
4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Tributyltin				
4 Day Average	0.072	0.072	0.072	0.072
1 Hour Average	0.46	0.46	0.46	0.46
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol(Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Acrolein				
4 Day Average	3.0	3.0	3.0	3.0
1 Hour Average	3.0	3.0	3.0	3.0
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
Chlorpyrifos				
4 Day Average	0.041	0.041	0.041	0.041
1 Hour Average	0.083	0.083	0.083	0.083
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor				

(Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION				
INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Executive Secretary shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

(3) Site Specific Standards for Temperature
Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:
Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * MIN (2.85, 1.45*10^{0.028*(25-T)})$

Fish Early Life Stages are Absent:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * 1.45*10^{0.028*(25-MAX(T,7))})$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

mg/l as N (Acute) = $(0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH-7.204}))$

Class 3B, 3C, 3D:

mg/l as N (Acute) = $0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where applicationof the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: H_2S = Dissolved Sulfide * $e^{((-1.92 + pH) + 12.05)}$

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88

8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Present
Temperature, C

pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.77
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.97	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.76	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.73	0.65	0.57	0.50	0.44	0.39	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.56	0.56	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Absent
Temperature, C

pH	0-7	8	9	10	11	12	13	14	16
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06
6.6	10.7	10.1	9.37	9.37	8.79	8.24	7.72	7.24	6.36
6.7	10.5	9.99	9.20	8.62	8.08	7.58	7.11	6.66	5.86
6.8	10.2	9.81	8.98	8.42	7.90	7.40	6.94	6.51	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.442

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	0.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	0.68	1.47	1.29	1.14	1.00	0.879	0.733
8.2	0.43	1.26	1.11	0.073	0.855	0.752	0.661
8.3	0.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	0.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	$CF * e^{(0.7409\ (\ln(\text{hardness}))\ -4.719}$ CF = 1.101672 - ln(hardness) (0.041838)
CHROMIUM III	$CF * e^{(0.8190(\ln(\text{hardness}))\ +\ 0.6848}$ CF = 0.860
COPPER	$CF * e^{(0.8545(\ln(\text{hardness}))\ -1.702)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-4.705)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness}))+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	$Cf * e^{(0.8473(\ln(\text{hardness}))+0.884)}$ CF = 0.986

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$CF * e^{(1.0166(\ln(\text{hardness}))-3.924)}$ CF = 1.136672 - ln(hardness)(0.041838)
CHROMIUM (III)	$CF * e^{(0.8190(\ln(\text{hardness}))\ +3.7256)}$ CF = 0.316
COPPER	$CF * e^{(0.9422(\ln(\text{hardness}))-\ 1.700)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-1.460)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness}))\ +2.255}$ CF= 0.998
SILVER	$CF * e^{(1.72(\ln(\text{hardness}))-\ 6.59}$ CF = 0.85
ZINC	$CF * e^{(0.8473(\ln(\text{hardness}))\ +0.884}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH))-5.134}$	$e^{(1.005(pH))-4.869}$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR
DISSOLVED OXYGEN FOR JORDAN RIVER, SURPLUS CANAL, AND STATE CANAL
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism (ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	100 MCL	4,600
Selenium	A	4,200
SilverThallium	0.24	0.47
Zinc	7,400	26,000
Cyanide	140	140
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	6.0	9.0
Acrylonitrile	0.051 B	0.25 B
Alachlor	2.0	
Atrazine	3.0	
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbofuran	40	
Carbon Tetrachloride	0.23 B	1.6 B
Chlorobenzene	100 MCL	1,600
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dalapon	200	
Di(2ethylhexl)adipate	400	
Dibromochloropropane	0.2	
Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	7 MCL	7,100
Dichloroethylene (cis-1,2)	70	
Dinoseb	7.0	
Diquat	20	
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	0.34	21
Endothall	100	
Ethylbenzene	530	2,100
Ethylene Dibromide	0.05	
Glyphosate	700	
Haloacetic acids	60 E	
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
Ocamyl (vidate)	200	
Picloram	500	
Simazine	4	
Styrene	100	
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	290
2,4-Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	10,000	860,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
BenzoaAnthracene	0.0038 B	0.018 B
BenzoaPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-Chloroisopropy1Ether	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,9002-
Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa,hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
Phenanthrene		
Pyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls PCB's	0.000064 B,D	0.000064 B,D
Toxaphene	0.00028 B	0.00028 B

Footnotes:

A. See Table 2.14.2

B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
April 1, 2012 **19-5**
Notice of Continuation October 2, 2007

R331. Financial Institutions, Administration.
R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.
R331-7-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15), and 7-1-501.

(2) This rule applies to all depository institutions and their subsidiaries subject to the jurisdiction of the Department of Financial Institutions.

(3) The purpose of this rule is to clarify acceptable employment of deposits and other funds involved in leasing or leasing related transactions.

R331-7-2. Definitions.

(1) "Affiliate" means any company under common control with the depository institution excluding any subsidiary.

(2) "Assigned lease" means a lease having all of the following characteristics:

(a) Residual dependence greater than 5% of original equipment cost;

(b) Originated by a lessor - assignor who subsequently assigned its rights or sold a participation in the lease, payments, or ownership rights to the depository institution - assignee;

(c) The assigned lease is either a tax or non-tax lease;

(d) The depository institution may or may not have recourse to the assignor in addition to lessee recourse;

(e) The assigned lease is accounted for in accordance with R331-7-9.

(3) "Bargain call purchase option" means a written call purchase option which is a lessee option to purchase the asset as contrasted with a put purchase option which is a lessor right to force the lessee to purchase the asset. An option is considered a bargain if at the inception of the lease the purchase option exercise price is considered to be significantly less than the expected future fair market value of the property at the time the option becomes exercisable.

(4) "Capital lease vs. operating lease" means if at its inception a lease meets one or more of the (a) through (d) criteria and both of the (e) and (f) criteria, the lease shall be classified as a sales-type capital lease or a direct-financing capital lease, whichever is appropriate, by the lessor. Otherwise, it shall be classified as an operating lease.

(a) The lease automatically transfers ownership of the property to the lessee during or by the end of the lease term.

(b) The lease contains a bargain call purchase option.

(c) The lease term is equal to 75% or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(d) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

(i) However, if the beginning of the lease terms falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used to classify the lease.

(ii) A lessor shall compute the present value of the minimum lease payments using the interest rate implicit in the lease.

(e) The collectability of the minimum lease payments shall be reasonably predictable. A lessor shall not be precluded from classifying a lease as a sales-type lease or as a direct financing lease simply because the receivable is subject to an estimate of uncollectability based on experience with groups of similar receivables.

(f) No important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease. Important uncertainties might include commitments by the lessor to guarantee performance of the leased property in a manner more extensive than the typical product warranty or to effectively protect the lessee from obsolescence of the leased property. However, the necessity of estimating executory costs to be paid by the lessor shall not by itself constitute an important uncertainty as referred to herein.

(5) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(6) "Control" means control as defined in Section 7-1-103.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means depository institution as defined in Section 7-1-103, and any subsidiary.

(9) "Direct financing lease" means a capital lease other than a leveraged lease that does not give rise to a dealer's profit or loss to the lessor but that meets one or more of the first four criteria and both criteria (e) and (f) in Subsection (4) above. In a direct financing lease, the cost and fair market value of the leased property is the same at the inception of the lease.

(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, as amended, which outlines the required accounting procedures for accounting for leases by a lessor and is incorporated by reference. Other statements by the FASB, which are incorporated by reference, concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.

(11) "Gross investment in the lease" means the aggregate of the total minimum lease payments receivable and the unguaranteed residual in the lease.

(12) "Implicit interest rate" means the discount interest rate in a lease which when applied to the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him. This definition does not necessarily purport to include all factors that a lessor might recognize in determining his rate of return.

(13) "Leveraged lease" means a lease having all of the following characteristics:

(a) The lease involves at least three parties: a lessee, a long-term non-recourse creditor, and a lessor, commonly called the equity participant. A depository institution could be either the long-term non-recourse creditor or the equity participant;

(b) The financing provided by the long-term non-recourse creditor is non-recourse as to the general credit of the lessor although the creditor may have recourse to the specific property leased and the unremitted rentals relating to it. The amount of the non-recourse financing is sufficient to provide the lessor with substantial "leverage" in the transaction;

(c) Except for the exclusion of leveraged leases from the definition of a direct financing lease as set forth in R331-7-2(9), the lease otherwise meets the direct financing lease definition. A participation in a net, limited residual dependent lease purchased by a depository institution and a lease that meets the definition of a sales-type lease set forth in R331-7-2(4) shall not be considered a leveraged lease.

(14) "Limited residual dependent" means a lease from

which the lessor can reasonably expect to realize a return of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, plus a reasonable profit, all of which are derived from:

(a) Lease rental payments;

(b) Estimated tax benefits; and

(c) The limited in amount estimated residual value of the property at the expiration of the initial non-cancelable term of the lease. The degree to which a depository institution may depend upon residual value to derive a profit from a lease transaction is subject to certain residual dependence restrictions set forth at Rule R331-7-4(1).

(15) "Minimum lease payments" means the minimum payments received on a lease which include any or all of the following:

(a) Guaranteed residual value by lessee or related party whether or not title transfers;

(b) Basic rentals during the non-cancelable lease term;

(c) Renewal rentals preceding a bargain call purchase option;

(d) Bargain call purchase options;

(e) Purchase option puts whether bargain or not;

(f) Third party residual guarantee, excluded by lessee as a criterion;

(g) Non-renewal penalties; and

(h) Unguaranteed residuals, including non-bargain purchase options, are excluded from minimum lease payments.

(16) "Net investment in the lease" means the gross investment less the unearned income.

(17) "Net lease" means a lease under which the depository institution will not directly provide or be obligated to provide for:

(a) The servicing, repair, or maintenance of the leased property during the lease term; however, the depository institution shall not be precluded from offering these same "full-service" benefits indirectly by subcontracting such service, repair, or maintenance to independent sub-contracting firms provided that such firms have the resources to meet the terms of the service contract;

(b) The purchasing of parts and accessories for the leased property, provided however, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the net, limited residual dependence requirements;

(c) The loan of replacement or substitute property while the leased property is being serviced or repaired unless such loan or substitution of property is provided by an independent firm whose loan or replacement services have been subcontracted;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

(e) The renewal of any license or registration for the property unless such action by the depository institution is necessary to protect its interest as an owner or financier of the property.

(18) "Non-tax lease" means a lease wherein the depository institution as a lessor does not receive the tax benefits of ownership of the leased property, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(19) "Purchase option put" means a lessor right to force the lessee to purchase the asset.

(20) "Residual" means a residual payment or residual value in a lease which is represented by any of the following:

(a) A fixed purchase option fixed either as a dollar amount or as a percentage of cost of the leased property;

(b) A guaranteed residual where the residual value is guaranteed by the lessee, a third party, or the manufacturer or vendor;

(c) A fair market value purchase option where the option price is determined at the end of the lease based on the prevailing appraised market value;

(d) An unguaranteed residual such as in a closed end lease where the property reverts back to the lessor at the end of the lease term at which time the lessor has no guarantee as to the value of the property upon resale or release of the property. Fixed call purchase options that are not considered "bargain" will also be referred to as unguaranteed residuals.

(21) "Residual dependence" means depending upon residual value, including rentals and tax benefits, in a lease transaction in order to earn a required profit, recoup original capital investment, and cover financing costs. Full payout leases do not depend upon residual for profit whereas residual dependent leases do.

(22) "Sales-type lease" means a capital lease that gives rise to dealer's profit or loss to the lessor, in other words, the fair value of the leased property at the inception of the lease is greater or less than its cost, and that meets one or more of the criteria (a) through (d) and both criteria (e) and (f) in R331-7-2(4).

(a) Normally, a sales-type lease will arise when the depository institution acts as a dealer using leasing as a means of improving profit margins. Leases involving lessors that are primarily engaged in financing operations normally will not be sales-type leases if they qualify under R331-7-2(4), but will most often be direct financing leases, as described in R331-7-2(9).

(b) However, a lessor need not be a dealer to realize dealer's profit or loss on a transaction. For example, if a lessor, who is not a dealer, leases an asset that at the inception of the lease has a fair value that is greater or less than its cost or carrying amount, if different, such a transaction is a sales-type lease, assuming the criteria referred to are met.

(23) "Subsidiary" means subsidiary as defined in Section 7-1-103.

(24) "Tax lease" means a lease where the depository institution as a lessor is construed to be the tax owner of the property for income tax purposes and thereby receives the tax benefits of ownership including tax credits and depreciation, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(25) "Total Capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and subordinated notes and debentures with more than one year maturity.

(26) "Unearned income" means the difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property. Unearned income shall be increased by any deferral of the investment tax credit or any other tax credits and decreased by any initial direct costs incurred on direct financing leases.

(27) "Unguaranteed residual value" means the estimated residual value of the leased property exclusive of a portion guaranteed by the lessee, by any party related to the lessee or by a third party unrelated to the lessor. If the guarantor is related to the lessor, the residual value shall be considered as unguaranteed.

(28) "Used property" means property which has been in use for 90 days or more.

R331-7-3. Acceptable Leases and Leasing Transactions for Depository Institutions.

(1) A depository institution may enter into or purchase a participation in net, limited residual dependent leases wherein the depository institution:

(a) Becomes the legal or beneficial owner and lessor of specific real or personal property or otherwise acquires such property at the request of a lessee who wishes to lease it from

the depository institution; or

(b) Becomes the owner and lessor of real or personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incurs obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net, limited residual dependent lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of that lease; or

(d) Becomes the assignee of the lease payments from another lessor where the depository institution is not the legal owner or tax owner of such property.

(2) This rule shall apply to any tax lease, non-tax lease, or assigned lease irrespective of whether the depository institution funded such lease or assignment with deposits or private funds, debt or equity.

(3) The classification of whether this rule applies to any lease and the related terminology should not be confused with other accounting or tax terminology; but should be applied only for the purposes of this rule. Any depository institution and especially any savings and loan association should consult its tax accountant before entering into any lease transaction.

(4) A depository institution, when acting as a lessor of property, may assign leases to a third party funding source. A depository institution shall be considered an assignor of lease payments, residual of assigned leases, or both, if after entering into a lease as a lessor of property, it then borrows against the lease payments, residual, or both, by assigning them to another funding source. A depository institution shall be considered an assignee of lease payments, residual of assigned leases, or both, if another lessor assigns the lease payments, residual, or both, of its own lease to the depository institution in order to fund the lease.

R331-7-4. Residual Dependence Restrictions for Depository Institutions.

(1) The residual dependence by a depository institution as a lessor of property on leases other than leases with terms of 24 months or less or automobiles and small trucks of one ton or less shall not exceed 30% of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer of such property, or by a third party which is not an affiliate of the depository institution and the depository institution makes the determination that the guarantor has the resources to meet the guarantee.

(a) Any such guarantee of residual value by a third party is to be considered in addition to the requirement that the unguaranteed residual value estimate shall not exceed 30% of the acquisition cost of the property.

(b) However, the combined total of the 30% unguaranteed residual value and the guaranteed residual value may not exceed 50% of the leased property's acquisition cost without the prior written approval of the commissioner.

(2) In all cases, however, both the estimated residual value of the property and that portion of the guaranteed residual value relied upon by the lessor to satisfy the requirements of a limited residual dependent lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the credit worthiness of the lessee and any guarantor of the residual value, and only secondarily on the residual market value of the leased property.

R331-7-5. Salvage Powers for Depository Institutions.

(1) If, in good faith, a depository institution believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of this rule shall not prevent the depository institution:

(a) As the owner, lessor, or both, under a net, limited residual dependent lease from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(c) Upon return of the leased property by the lessee to the depository institution at the expiration of the lease term or at any other time that the depository institution has possession of the property upon default by the lessee; the depository institution in order to avoid the cost and inherent liability of maintaining the property and to recoup its investment in the lease plus financing costs shall:

(i) Sell the property;

(ii) Release the property by entering into a new and separate net, limited residual dependent lease with a lessee;

(iii) Rent the property in which case the depository institution may be required to maintain the property in suitable condition to be used by another party on a rental basis. Such maintenance must be performed by an independent firm on a sub-contract basis only;

(iv) Transfer the property to a separately identified holding or repossessed property account within the depository institution.

(2) The provisions of this section do not prohibit a depository institution from including any provisions in a lease, or from making any additional agreements to protect its financial position or investment in the circumstances.

R331-7-6. Sales-Type Capital Lease Restrictions for Depository Institutions.

(1) Within the limitations of this rule, a depository institution, as lessor, shall be permitted to enter into a sales-type capital lease. Although a depository institution shall be allowed to earn a gross profit in a lease transaction in addition to interest income from the rentals and residual, it shall be precluded from inventorying property except for sample or display purposes.

(2) Although many equipment manufacturers and vendors require their dealers to inventory products prior to sale in order for the depository institution to be allowed to receive a wholesale price or comparable discount, the inventory of equipment prior to leasing the equipment is not permitted.

(3) A depository institution may purchase or acquire property in a direct lease situation only in response to a lessee's request for that specific property and any gross profit derived from volume discounts shall be accounted for separately from the lease.

R331-7-7. Sale-Leaseback Restrictions for Depository Institutions.

A depository institution acting as a lessor may lease used property in a sale-leaseback transaction provided that:

(1) The aggregate of the total net investment in such sale-leaseback transactions, at any point, in time does not exceed 50% of the depository institution's total capital; and

(2) The sale-leaseback transactions are separately identified.

R331-7-8. Leveraged Lease Restrictions for Depository Institutions.

(1) Due to increased risk inherent in leveraged leasing, a depository institution may invest as a lessor in a leveraged lease provided that:

(a) The aggregate of such leveraged leases does not exceed 30% of the depository institution's total capital at any point in

time; and

(b) The leveraged leases are separately identified.

(2) A depository institution shall not enter into a leveraged lease as a lessor, equity-participant unless the inherent tax benefits are useable by the depository institution.

(3) This rule does not preclude a depository institution from purchasing non-recourse interests in leveraged lease pools or joint ventures, provided that:

(a) The aggregate of such participations or interests does not exceed 30% of the depository institution's total capital; and

(b) The participations or interests are separately identified.

R331-7-9. Accounting Requirements for Depository Institutions.

(1) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for acceptable leases and leasing transactions whether the depository institution is the assignor or the assignee. All other accounting and reporting procedures concerning leasing not covered by this rule shall be in accordance with generally accepted accounting principles as promulgated by the FASB, as amended.

(a) As lease payment revenue is received by the depository institution under a direct financing or sales-type capital lease, the lease payments shall be amortized or allocated between principal and interest income actuarially using the effective interest method over the lease term. A depository institution shall be precluded from using other approximations to the effective interest method such as the "Rule of 78's" method of amortizing lease payments.

(b) In accounting for a capital lease whether a sales-type or direct financing lease, a depository institution shall record the gross investment in the lease on the balance sheet allocated into its two components:

(i) Total minimum lease payments receivable; and

(ii) Unguaranteed residuals.

(c) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. Such unearned income shall be increased by any deferral of the investment tax credit or any other tax credits if the lessor elects deferral or if deferral is required by generally accepted accounting principles and decreased by any initial direct costs incurred on direct financing leases.

(d) Initial direct costs are limited to those costs incurred by the lessor that are directly associated with negotiating and consummating completed leasing transactions. Those costs include commissions, legal fees, cost of credit investigations, and costs of preparing and processing documents for new leases acquired.

(i) In addition, that portion of salespersons' compensation, other than commissions, and the compensation of other employees that is applicable to the time spent in the activities described above with respect to completed leasing transactions shall also be included in initial direct costs. That portion of salespersons' compensation and the compensation of other employees that is applicable to the time spent in negotiating leases that are not consummated shall not be included in initial direct costs.

(ii) No portion of supervisory and administrative expenses or other indirect expenses, such as rent and facilities cost, shall be included in initial direct costs.

(iii) In order to prevent initial overstatement by a depository institution of reported earnings and subsequent understatement of reported earnings throughout the remainder of the lease term, the depository institution shall not recognize initial direct costs in excess of 8% of the unearned income for leases which cost less than $10,000 at their inception; or initial direct costs in excess of 6% of the unearned income for leases which cost $10,000 or more at the inception of the lease. Initial direct costs shall include all costs directly attributable to consummating a lease as defined above.

(e) In accounting for the amount of initial direct costs associated with consummated direct financing capital leases, a depository institution is not required to treat as an initial direct cost the estimate of bad debt expense pertaining to a lease subject to the limitations of R331-7-9(d)(iii) which limits the maximum amount of initial direct costs.

(f) At any time during the lease term when it has been determined by a depository institution that there has been an impairment of the estimated residual value as initially recorded then such impairment of value shall be recognized in the period that the impairment of value has been determined.

(i) Any such impairment of guaranteed or unguaranteed residual value shall be recognized by a debit charge to income and a corresponding credit reduction to the unearned residual component of the gross investment in the lease.

(ii) A new implicit rate is to be computed for the lease using the reduced residual value and any remaining unearned income is to be recognized actuarially over the remaining lease term using the newly computed implicit rate.

(g) Differences between reported accounting net income for book purposes of a depository institution and its taxable income for the same period caused by the application of different accounting principles such as depreciation methods; or differences in how revenue is recognized; or because of any other timing differences, shall be shown in the depository institution's financial statements as a deferred tax credit or charge as required by interperiod tax allocation procedures explained in Accounting Principles Board Opinion No. 11, Accounting for Income Taxes, as amended, which is incorporated by reference.

(2) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for assigned leases whether the depository institution is the assignor or the assignee.

(a) A depository institution, after having entered into a lease as a lessor, may assign the lease payment stream to a third party in order to fund the lease. To such an assignment, the depository institution becomes the assignor.

(i) If the assignment is non-recourse to the depository institution any profits or loss on the assignment shall be recognized at the time of the transaction except when the assignment is between related parties. The profit or loss is the difference between the net investment in the assigned lease and the loan funds received from the lender.

(ii) If the assignment is recourse to the depository institution or if it is non-recourse but between related parties, both the lease and the related loan should be shown separately in the financial statements of the depository institution.

(iii) The lease shall be shown on the balance sheet by recording the gross investment in the lease receivable and the unearned income account relating to the lease. The net of these two accounts represents the net investment in the lease. The gross investment in the lease receivable shall be further allocated and shown in the financial statements in its two separate components:

(A) Minimum lease payments, and

(B) Residual.

(b) A depository institution which has funded a lease originated by another lessor and taken an assignment of the lease may have funded the lease on either a recourse or a non-recourse basis to the lessor. In either case, the assignment shall be regulated by this rule only if the residual dependence is greater than 5% of the cost of the leased property, in which case the assignment shall be accounted for as described in R331-7-9(2)(a) above. If the residual dependence is equal to or less than 5% of the cost of the leased property then such assignment

shall not be regulated by this rule and shall be accounted for as a loan.

(3) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for operating leases:

(a) Leases other than sales-type, direct financing, or leveraged capital leases are classified as operating leases.

(b) Revenue in an operating lease shall be recognized in conformity with FASB 13 paragraph 19.b.

(4) Accounting for leveraged leases, sale-leasebacks, and real estate sales shall be in conformity with FASB 13 procedures:

(a) Leveraged leases, FASB 13 paragraphs 41-47;

(b) Sale-leasebacks, FASB 13 paragraphs 32-34;

(c) Real estate leases, FASB 13 paragraphs 24-28.

KEY: financial institutions, leases

March 9, 2012	**7-1-301(4)**
Notice of Continuation July 25, 2007	**7-1-301(8)(a)**
	7-1-501

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-101. Title.

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

R359-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

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

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

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

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

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

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

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

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

(c) violating the rules for conduct of contests;

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

(e) testing positive for HIV, Hepatitis B or C;

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

(g) entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(h) providing false or misleading information to the Commission or a representative of the Commission;

(i) behaving at any time or place in a manner which is deemed by the Commission to reflect discredit to unarmed combat;

(j) engaging in any activity or practice that is detrimental to the best interests of unarmed combat;

(k) knowing that an unarmed contestant suffered a serious injury prior to a contest or exhibition and failing or refusing to inform the Commission about that serious injury.

(l) conviction of a felony or misdemeanor, except for minor traffic violations.

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

R359-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R359-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1). The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

R359-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, timekeeper, manager, contestant, second, matchmaker, referee, or judge.

(2) A licensed amateur contestant shall not compete against a professional unarmed combat contestant, or receive a purse, or a percentage of ticket sales, and/or other remuneration (other than for reimbursement for reasonable travel expenses and per diem, consistent with IRS guidelines).

(3) A licensed manager or contestant shall not referee or judge any event or contestant affiliated with a gym or training facility they have been involved with during the past 12 months.

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

R359-1-302. Licensing - Procedure.

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

R359-1-401. Designation of Adjudicative Proceedings.

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

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

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

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

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

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

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

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

(c) protests against the results of a match.

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

R359-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.

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

(5) The Commission shall be designated as the sole

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

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

R359-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

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

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

R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

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

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

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

R359-1-405. Reconsideration and Judicial Review.

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

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

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

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

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

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of $10,000. or total sum of the contestant purses, officials fees and estimated commission fees, whichever is greater. Promoters who have held less than 5 unarmed combat events in the state of Utah shall deposit an additional $10,000 minimum Cashier's Check or Bank Draft with the commission no later than 7 days prior to the event or the event may be cancelled by the commission.

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

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

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

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

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) The promoter shall be responsible for payment of any commission fee(s) deducted from a contestant's purse, if the fees are not collected directly from the contestant at the conclusion of the bout or if the contestant fails to compete in the event.

(11) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of $10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care for injuries sustained during a contest or exhibition, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall also provide life insurance coverage of $10,000 for each contestant in case of death resulting from injuries sustained during a contest or exhibition.

(d) The required medical insurance and life insurance coverage shall not be waived by the contestant or any other party.

(e) A contestant seeking medical insurance reimbursement for injuries sustained during an unarmed combat event shall obtain medical treatment for their injuries within 72 hours of their bout and maintain written records of their treatment, expenses and correspondence with the insurance provider and promoter to ensure coverage.

(f) The promoter shall not delay or circumvent the timely

processing of a claim submitted by a contestant injured during a contest or exhibition.

(12) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a) The event attendance fee established in the adopted fee schedule on the date of the event.

(b) 3% of the first $500,000, and one percent of the next $1,000,000, of the total gross receipts from the sale, lease, or other exploitation of internet, broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than $25,000. These fees shall be paid to the commission within 45 days of the event. The promoter shall notify and provide the commission with certified copies of any contracts, agreements or transfers of any internet, broadcasting, television, and motion picture rights for any contest or exhibition within seven days of any such agreements. The commission may require a surety deposit be provided to the commission to ensure these requirements are met.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper, if not previously paid by the promoter.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

R359-1-502. Ringside Equipment.

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

(a) commission-approved gloves in whole, clean and in sanitary condition for each contestant;

(b) stools for use by the seconds;

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

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

(e) a portable resuscitator with oxygen;

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

(g) seats at ringside for the assigned officials;

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

(i) ring (cage) cleaning supplies, including bucket, towels and disinfectant;

(j) a public address system;

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

(l) a separate room for physical examinations;

(m) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(n) adequate security personnel; and

(o) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, for physical examinations or weigh-ins.

R359-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R359-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

(i) the Commission members, Director and representatives;

(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and

(iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter

is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R359-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;
(b) teeth;
(c) jaw;
(d) neck;
(e) chest;
(f) ears;
(g) nose;
(h) throat;
(i) skin;
(j) scalp;
(k) head;
(l) abdomen;
(m) cardiopulmonary status;
(n) neurological, musculature, and skeletal systems;
(o) pelvis; and
(p) the presence of controlled substances in the body.

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

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

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

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

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

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

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

R359-1-506. Drug Tests.

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:

(a) Alcohol;
(b) Illicit drug;
(c) Stimulant; or

(d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1- 506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the 2011 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as

Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1)or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a licensee shall submit to a test of body fluids to determine the presence of drugs. A licensee shall give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

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

(a) immediately suspend the licensee's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

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

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

R359-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

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

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

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

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

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

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. Contestant Use or Administration of Any Substance.

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

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

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

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

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

R359-1-510. Weighing-In.

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

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

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

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(2) Event officials are prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an event official shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an event official who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

(3) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(4) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(5) The Judges, Referee(s) and Timekeeper officiating at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission approves to officiate in a contest or exhibition.

(7) Event Officials' Minimum Fee Schedule:

TABLE

NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	$100.00	$50.00	$35.00
>5	$100.00	$100.00	$50.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

R359-1-512. Announcer.

(1) The promoter may select the event announcer.

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

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

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

(3) An announcer shall not engage in unprofessional conduct.

(4) The announcer is prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an announcer shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an announcer who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

R359-1-513. Timekeeper.

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

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

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

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

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

R359-1-514. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

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

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

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

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

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.

(1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not sanctioned by an Association of Boxing Commission (ABC)

member commission for a period of 60 days from the date of the event.

(2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last competition in an unarmed combat event not sanctioned by an ABC member commission.

(3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

R359-1-601. Boxing - Contest Weights and Classes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the weight differential;

(c) the caliber of opponents;

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

(e) previous suspensions or disciplinary actions.

R359-1-602. Boxing - Number of Rounds in a Bout.

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

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

R359-1-603. Boxing - Ring Dimensions and Construction.

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

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

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

R359-1-604. Boxing - Gloves.

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

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

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

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

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

R359-1-605. Boxing - Bandage Specification.

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

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

(3) The use of water or any other substance other than

medical tape on the bandages is prohibited.

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

R359-1-606. Boxing - Mouthpieces.

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

R359-1-607. Boxing - Contest Officials.

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

(a) one referee;

(b) three judges;

(c) one timekeeper; and

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

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

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

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

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

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

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

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

R359-1-608. Boxing - Contact During Contests.

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

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

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

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

R359-1-609. Boxing - Referees.

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

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

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

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

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

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

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

R359-1-610. Boxing - Stalling or Faking.

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

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

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

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

R359-1-611. Boxing - Injuries and Cuts.

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

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

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

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

(b) a technical decision to the injured contestant if the

injured contestant is ahead on points on a majority of the scorecards.

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

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

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

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

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

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

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

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

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

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

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

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

R359-1-612. Boxing - Knockouts.

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

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

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

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

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

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

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

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

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

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

R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

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

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

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

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

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed

contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

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

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

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

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

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

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

R359-1-614. Boxing - Waiting Periods.

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

TABLE

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

R359-1-615. Boxing - Fouls.

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

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

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

(c) hitting or gouging with an open glove;

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

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

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

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

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

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

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

(k) hitting below the belt line;

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

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

(n) using abusive language in the ring;

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

(p) intentionally spitting out a mouthpiece;

(q) any backhand blow; or

(r) biting.

R359-1-616. Boxing - Penalties for Fouling.

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

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

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

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

R359-1-617. Boxing - Contestant Outside the Ring Ropes.

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

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

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

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

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

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

R359-1-618. Boxing - Scoring.

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

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

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

(4) Officials who score the contest shall sign their

scorecards.

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

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

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

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

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

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

R359-1-619. Boxing - Seconds.

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

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

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

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

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

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

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R359-1-609(6) and R359-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

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

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

R359-1-620. Boxing - Managers.

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

R359-1-621. Boxing. Identification - Photo Identification Cards.

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

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

(a) the contestant's name and address;

(b) the contestant's social security number;

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

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

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

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

R359-1-622. Boxing - Dress for Contestants.

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

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

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

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

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

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

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

R359-1-623. Boxing - Failure to Compete.

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

R359-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the

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

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

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

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

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

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

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

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R359-1-507 of this Rule and Subsection 63C-11-317(1).

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

R359-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R359-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

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

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-802. Martial Arts Contest Weights and Classes.

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

(i) super heavyweight is over 265 lbs. (120.45 kgs.).

R359-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

R359-1-1001. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R359-1-1002. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

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

(3) "Grant" means the Commission's distribution of

monies as authorized under Section 63C-11-311(3).

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

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

R359-1-1003. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

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

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

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

(i) the financial need for the grant;

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

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

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

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

(b) Maintenance costs; and

(c) Equipment costs.

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

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

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

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

R359-1-1004. Criteria for Awarding Grants.

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

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

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

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

(4) demonstrated need for the funding; or

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

KEY: licensing, boxing, unarmed combat, white-collar contests
December 15, 2011 63C-11-101 et seq.
Notice of Continuation March 30, 2012

R380. Health, Administration.
R380-60. Local Health Department Emergency Protocols.
R380-60-1. Authority and Purpose.

(1) These emergency protocols are adopted by the Department under authority of Sections 58-1-307(6), (7), (8), and (9).

(2) These protocols shall only be in effect during a declared emergency as defined herein.

R380-60-2. Definitions.

(1) Administer - means the direct application of a drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human by another person.

(2) Declaration of Emergency - means the declaration of a national, state (Section 63K-4-201), local (Section 63K-4-301) or public health emergency (Section 26-23b-102 and R389-702-10).

(3) Department - means the Utah Department of Health.

(4) Dispense - means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use.

(5) Distribute - means to deliver a drug or device other than by administering or dispensing.

(6) Emergency Use Authorization (EUA) - means the authority of the US Food and Drug Administration (FDA) to approve the emergency use of drugs, devices, and medical products (including diagnostics) that were not previously approved, cleared, or licensed by FDA (hereafter, "unapproved") or the off-label use of approved products in certain well-defined emergency situations.

(7) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(8) Strategic National Stockpile (SNS) - means a national repository of antibiotics, chemical antidotes, antitoxins, life-support medications, IV administration, airway maintenance supplies, and medical/surgical items.

(9) Triage - for purposes of this rule means the sorting of and allocation of treatment to patients according to priorities designed to maximize the number of survivors and optimize the use of available resources.

R380-60-3. Distribution of Medication.

(1) Upon the declaration of an emergency, the Department shall coordinate the distribution of vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance received from the Strategic National Stockpile or another emergency stockpile and delivered to local health departments for further distribution, dispensing and administration.

(2) The local health department may distribute the medication received from the Department to emergency personnel and other facilities as designated herein and within the local health department's jurisdiction.

(3) If necessary to prevent or treat the disease or condition that gave rise to, or is a consequence of the emergency, the Department or local health departments may further distribute a vaccine, antiviral, antibiotic, or other medication that is not a controlled substance received from the Strategic National Stockpile or another emergency stockpile for dispensing or direct administration by a:

(a) pharmacy (including back filling of inventory);

(b) prescribing practitioner;

(c) licensed health care facility;

(d) federally qualified community health clinic; or

(e) governmental entity for use by a community more than 50 miles from any facility listed in (a) to (d).

(4) The facility receiving medication from the Department or local health departments shall be responsible for record keeping as provided for in Section R380-60-6 and for the tracking, storage and the proper return, disposal or destruction of any unused medication.

(5) A facility receiving medication as provided in Subsection R380-60-3(3) must follow applicable state or Federal law governing dispensing and administration of the medications.

R380-60-4. Dispensing of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person with authority to prescribe working in a local health department, may supervise or direct the dispensing of a vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance, under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) other conditions justifying the dispensing of the medication without a prescription, including the terms of an Emergency Use Authorization to:

(i) the contacts of a patient (contact of a patient with a physician patient relationship);

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have coverage for the prescription in the individual's health insurance plan;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person dispensing the vaccine, antiviral, antibiotic or other prescription medication is not a licensed pharmacist authorized to dispense medications under Title 58 Chapter 17b, the dispensing shall be conducted according to a written protocol approved by the medical director of the Department or the local health department.

R380-60-5. Administration of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person licensed to administer (scope of practice) working in a local health department, may supervise or direct the administration of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) conditions for administration consistent with the terms of an Emergency Use Authorization to:

(i) the contacts of a patient;

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have prescription coverage;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person administering the vaccine, antiviral, antibiotic, or other prescription medication is not licensed to administer, the administration shall follow procedures described in a written protocol approved by the medical director of the Department or the local health department.

R380-60-6. Record Keeping.

(1) Records regarding the inventory (lot number, expiration date, etc.), distribution, dispensing and administration (patient data collection) of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance shall be consistent with the terms of any Emergency Use Authorization or specific Strategic National Stockpile instructions.

(2) The Department, local health department or facility described in Section R380-60-3 that dispenses or administers a vaccine, antiviral, antibiotic or other prescription medication under the authorization of this Rule shall comply with the conditions of any Emergency Use Authorization and shall keep an inventory record describing the drug and the name and contact information for each individual that received the drug.

(3) If the circumstances of the emergency make it impossible to keep these inventory records, the Executive Director of the Department may grant an exception to this requirement limiting the record keeping requirement to such records as are appropriate and possible in the circumstances of the emergency.

KEY: public health emergency
March 7, 2012

58-1-307(6)
58-1-307(7)
58-1-307(8)
58-1-307(9)

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

R382-10-2. Definitions.

(1) The Department incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2011.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(e) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(9).

(h) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(i) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(j) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(m) "Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(n) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

(o) "Verification" means the proof needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who assumes responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child is not eligible for CHIP, the parent or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage.

(b) An enrollee leaves the household or dies.

(c) An enrollee or the household moves out of state.

(d) Change of address of an enrollee or the household.

(e) An enrollee enters a public institution or an institution for mental diseases.

(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Sections R414-301-5 and R414-301-6.

(9) An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical

services that the enrollee receives under CHIP.

R382-10-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

(5) The Department and the eligibility agency may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in CHIP, a child must be a citizen or national of the United States or a qualified alien.

(2) The provisions of Section R414-302-1 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The eligibility agency may request an applicant to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for CHIP assistance.

(3) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but reaches the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(6) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the household's gross annual income; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan has a deductible that must be met before the plan will pay any claims. For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP. If the employer-sponsored health plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP of up to $20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

(d) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage and UPP may discontinue the employer-sponsored health plan or COBRA coverage and switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(7) The eligibility agency shall deny eligibility if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date for enrollment under CHIP.

(a) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(b) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(c) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny the application.

(8) If an applicant or an applicant's parent voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for

CHIP without a 90-day ineligibility period.

(9) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(10) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested have access to or are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(11) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(12) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(6) if the change is reported timely. Failure to make a timely report may result in overpayment.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size, whether or not the individual is eligible to enroll in the program:

(a) At least one child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the eligible child if they are under 19 years of age. They may also be eligible for CHIP if they meet the CHIP eligibility criteria;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size;

(f) Unborn children of anyone included in the household size; and

(g) Children of a former spouse when a divorce is finalized.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) Any household member described in Subsection R382-10-11 (1) who is not a citizen, a national, or a qualified alien is included in the household size. The eligibility agency counts the income of these individuals the same way that it counts the income for household members who are citizens, nationals, or qualified aliens.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

(1) To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size.

(a) All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, counts toward household income, unless this section specifically describes a different treatment of the income.

(b) When a CHIP household is scheduled for a renewal of eligibility, the household may give consent to the eligibility agency to access the household's most recent adjusted gross income from the Utah State Tax Commission. Only CHIP eligible households can elect this option. When the household elects this option, the eligibility agency shall use the adjusted gross income from the most recent tax record as the countable income of the household to determine eligibility for CHIP.

(2) The Department may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The Department may count any income in a trust that is available to, or is received by any of the following household members:

(a) a parent or spouse of a parent;

(b) an eligible child who is the head of the household;

(c) a spouse of an eligible child if the spouse is 19 years of age or older; or

(d) a spouse who is under 19 years old and is the head of the household.

(4) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance is countable income.

(5) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(6) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(10) SSI and State Supplemental Payments are countable income.

(11) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(12) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(13) Child Care Assistance under Title XX is not

countable income.

(14) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(15) Needs-based Veteran's pensions are counted as income. The Department may only count the portion of a Veteran's Administration benefit to which the individual is legally entitled.

(16) The Department may not count the income of a child under the age of 19 if the child is not the head of a household.

(17) The Department shall count the income of the spouse of an eligible child if:

(a) the spouse is 19 years of age or older; or

(b) the spouse is under 19 years old and is the head of the household.

(18) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(19) Reimbursements for expenses incurred by an individual are not countable income.

(20) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103 286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(21) Victim's Compensation payments as defined in Pub. L. No. 101 508 are not countable income.

(22) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103 286 are not countable income.

(23) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(24) If the household expects to receive less than $500 per year in taxable interest and dividend income, then they are not countable income.

(25) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(26) The additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

(27) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(28) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(29) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(30) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(31) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

R382-10-14. Budgeting.

(1) The Department shall count the gross income for parents and stepparents of any child included in the household size to determine a child's eligibility, unless the income is excluded under this rule. The Department may only deduct required expenses from the gross income to make an income available to the individual. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) A household may elect upon renewal to have the Department use the most recent adjusted gross income (AGI) from the Utah State Tax Commission. The eligibility agency shall then use AGI instead of requesting verification of current income. If the use of AGI should result in an adverse decision or change, the household may provide verification of current income.

(5) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(6) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(7) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Eligibility Reviews.

(1) The applicant must complete and sign a written application or an on-line application to enroll in the CHIP

program. The application process includes gathering information and verification to determine the child's eligibility for enrollment in the program.

(2) The eligibility agency may accept any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment in person, through the mail, by fax, or online.

(4) The provisions of Section R414-308-3 apply to applicants for CHIP.

(5) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the parents or spouse, and any adult who assumes responsibility for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise.

(6) According to the provisions of Section 2105(a)(4)(F) of the Social Security Act, the Department provides medical assistance during a presumptive eligibility period to a child if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) the child is not enrolled in a health insurance plan; and

(c) the child's household income exceeds the applicable income limit for Medicaid, but does not exceed 200% of the federal poverty level for the applicable household size.

(7) A child determined presumptively eligible is required to file an application for medical assistance with the eligibility agency in accordance with the requirements of Section 1920A of the Social Security Act.

(8) A child may receive medical assistance during only one presumptive eligibility period in any six month period.

(9) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency shall use available, reliable sources to gather necessary information to complete the review. The eligibility agency may conduct the review without requiring the enrollee to provide additional information.

(10) The eligibility agency may ask the enrollee to respond to a request to complete the review process. If the enrollee fails to respond to the request during the review month, the agency shall end the enrollee's eligibility effective at the end of the review month and send proper notice to the enrollee. If the enrollee responds to the review or reapplies in the month after the review month, the eligibility agency shall treat the response as a new application. The application processing period then applies for this new request for coverage.

(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee.

(i) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month after the closure date.

(ii) If the enrollee fails to return verification within the application processing period or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) If the enrollee's case is closed for one or more calendar months, the enrollee must reapply for CHIP.

(11) If the enrollee responds to the review request during the review month, the eligibility agency may request verification from the enrollee.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The enrollee has at least ten calendar days to provide the requested verification to the eligibility agency.

(c) If the enrollee provides all verification by the due date in the review month, the eligibility agency shall determine eligibility and notify the enrollee of its decision.

(i) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(ii) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse decision. The enrollee does not owe a premium for the due process month.

(12) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(13) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(14) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(2) If a child made presumptively eligible files an application for medical assistance in accordance with the requirements of Section 1920A of the Social Security Act, presumptive eligibility continues only until the eligibility agency makes an eligibility decision based on that application. Filing additional applications does not extend the presumptive eligibility period.

(3) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(5) The eligibility agency shall redetermine eligibility at least every 12 months.

(6) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) The enrollee must provide any additional verification needed to determine if a child is eligible for Medicaid or the eligibility agency shall deny the application or review.

(b) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(c) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(d) If the use of the adjusted gross income (AGI) at a review causes the household to appear eligible for Medicaid, the eligibility agency shall request verification of current income and other factors needed to determine Medicaid eligibility. The eligibility agency cannot renew CHIP coverage if the household fails to provide requested verification.

(e) If the AGI causes the household to qualify for a more expensive CHIP plan, the household may choose to verify current income. If current income verification shows the family is eligible for a lower cost plan, the eligibility agency shall change the household's eligibility to the lower cost plan effective the month after verification is provided.

(7) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Sections R414-306-6 and R382-10-10, the effective date of CHIP enrollment is the first day of the application month.

(2) The presumptive eligibility period begins on the first day of the month in which a child is determined presumptively eligible for CHIP. Coverage cannot begin in a month that the child is otherwise eligible for medical assistance.

(3) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(4) If a child determined eligible for a presumptive eligibility period files an application in accordance with the requirements of Section 1920A of the Social Security Act and is determined eligible for regular CHIP based on that application, the effective date of CHIP enrollment is the first day of the month of application or the first day of the month in which the presumptive eligibility period began, if later.

(a) The four-day grace period defined in Subsection R382-10-18(3) applies if the applicant meets that criteria and the child was not eligible for any medical assistance during such time period.

(b) Any applicable CHIP premiums apply beginning with the month regular CHIP coverage begins, even if such months are the same months as the CHIP presumptive eligibility period.

(5) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections R414-306-6, R382-10-10 and the provisions of Subsection R382-10-18(3).

(6) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-19. Enrollment Period.

(1) Subject to the provisions in Subsection R382-10-19(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

(a) turns 19 years of age before the end of the 12-month enrollment period;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) begins to be covered under a group health plan or other health insurance coverage;

(e) enters a public institution or an institution for mental diseases; or

(f) does not pay the quarterly premium.

(3) The presumptive eligibility period ends on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the child's application when that application is made in accordance with the requirements of Section 1920A of the Social Security Act; or

(b) the last day of the month following the month in which a presumptive eligibility period begins if an application for medical assistance is not filed on behalf of the child by the last day of such month.

(4) The month that a child turns 19 years of age is the last month that the child may be eligible for CHIP, including CHIP presumptive eligibility coverage.

(5) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If the decrease in income causes the child to be eligible for a lower premium, the change in eligibility becomes effective the month after the eligibility agency receives verification of the change.

(d) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

(6) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

R382-10-20. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian or Alaska Native pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $75.

(2) The eligibility agency shall end CHIP coverage and assess a $15 late fee to a family who does not pay its quarterly premium by the premium due date. The agency may reinstate coverage when any of the following events occur:

(a) The family pays the premium and the late fee by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family whose CHIP coverage ends and who reapplies within one year for coverage must pay any outstanding premiums and late fees before the children can be re-enrolled.

(4) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(5) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

R382-10-21. Termination and Notice.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before taking a proposed action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-21 shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child moves out-of- state and is not expected to return;

(c) the child enters a public institution or an institution for mental diseases; or

(d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-22. Case Closure or Withdrawal.

The eligibility agency shall end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time before the eligibility agency makes a decision on the application.

KEY: children's health benefits

April 1, 2012	**26-1-5**
Notice of Continuation May 19, 2008	**26-40**

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 Criteria for Inpatient Reviews, 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.

(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.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

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 January 1, 2012. It also incorporates by reference State Plan Amendments that become effective no later than January 1, 2012.

(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, effective January 1, 2012, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective January 1, 2012.

(4) The Department incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective January 1, 2012.

(5) The Department incorporates by reference the Speech-Language Services Provider Manual, effective January 1, 2012.

(6) The Department incorporates by reference the Audiology Services Provider Manual, effective January 1, 2012.

(7) The Department incorporates by reference the Hospice Care Provider Manual, effective January 1, 2012.

(8) The Department incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective January 1, 2012.

(9) The Department incorporates by reference the Personal Care Provider Manual, with its attachments, effective January 1, 2012.

(10) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective January 1, 2012.

(11) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective January 1, 2012.

(12) The Department incorporates by reference the Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, effective January 1, 2012.

(13) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective January 1, 2012.

(14) The Department incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective January 1, 2012.

(15) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective January 1, 2012.

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 Department 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) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

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) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These 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 Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) 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 Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

R414-1-15. Medicaid Fraud.

The Department 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.

R414-1-29. Provider-Preventable Conditions.

The following applies to inpatient hospital services provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as defined in this CMS rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider-preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider- preventable conditions whether or not reimbursement for the services is sought. Medicaid providers must complete the Provider-Preventable Conditions Report as found at http://health.utah.gov/medicaid/index.html. Completed reports must be mailed to one of the following addresses within 30 calendar days of the event, as appropriate:

(a) Via U.S. Post Office: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; PO Box 143102; Salt Lake City, UT 84114-3102; or

(b) Via UPS or FedEx: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; 288 North 1460 West; Salt Lake City, UT 84116-3231.

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26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-21. Physical and Occupational Therapy.
R414-21-1. Introduction and Authority.

(1) This rule governs physical and occupational therapy services provided to Medicaid clients. It implements the provision of physical therapy and occupational therapy evaluation and treatment as authorized by 42 CFR 440.110(a)(1)(2), 440.110(b)(1)(2), and 440.70(b)(4).

(2) Physical and occupational therapy are optional services for adults.

R414-21-2. Eligibility Requirements.

Physical therapy and occupational therapy services are available to categorically and medically needy individuals under Medicaid when received from an independent occupational therapist or an independent physical therapist including group practices, rehabilitation centers, and hospitals.

R414-21-3. Program Access Requirements.

(1) Physical therapy may be provided only by a licensed physical therapist. The physical therapist may have a physical therapy assistant or aide under the physical therapist's immediate supervision provide the direct service so long as the physical therapist is present in the area where the person supervised is performing services and immediately available to assist the person being supervised in the services being performed.

(2) Occupational therapy may be provided only by a licensed occupational therapist. The occupational therapist may have a occupational therapy assistant under the occupational therapist's immediate supervision provide the direct service so long as the occupational therapist is present in the area where the person supervised is performing services and immediately available to assist the person being supervised in the services being performed.

R414-21-4. Service Coverage.

(1) Medicaid covers the following physical therapy services:

(a) therapeutic exercise;

(b) the application of heat, cold, water, air, sound, massage, and electricity;

(c) recipient evaluations and tests;

(d) measurements of strength, balance, endurance, range of motion and activities.

(2) Medicaid covers occupational therapy services to treat the following:

(a) traumatic brain injury;

(b) traumatic spinal cord injury;

(c) traumatic hand injury;

(d) congenital anomalies or developmental disabilities resulting in neurodevelopmental deficits; or

(e) cerebral vascular accident (CVA), but only if treatment begins within 90 days after the onset of the CVA.

(3) In exercising its best professional judgement to determine the amount, duration, and scope of optional services sufficient to reasonably achieve the purpose of the physical therapy or occupational therapy service, the Department uses the guidelines provided by the American Physical Therapy Association and the American Occupational Therapy Association to determine the number of visits allowed for the diagnosis.

(4) Medicaid does not cover:

(a) services for social or educational needs only;

(b) services to a recipient with a stable chronic condition whose function cannot be improved by the application physical therapy services;

(c) service to a recipient with no documented potential for improvement or who has reached maximum potential for improvement;

(d) non-diagnostic, non-therapeutic, repetitive or reinforcing procedures or other maintenance services, except for services that are both:

(i) to children under the age of 20 years; and

(ii) are limited to one therapy visit per month to train the caregiver to provide routine care, and repetitive or reinforced procedures in the residence.

(5) Medicaid pays for only one physical therapy session per day. Medicaid pays for only one occupational therapy session per day.

(6) Services to a resident of an Intermediate Care Facility for the Mentally Retarded are paid as part of the per diem payment for the recipient. Medicaid does not pay separately for those services.

(7) Physical therapy is limited to 20 visits annually without obtaining prior authorization to assure that the sessions are within the amount, duration, and scope limits established by the Department.

(8) Occupational therapy is limited to 20 visits annually without prior authorization to assure that the visits are within the amount, duration, and scope limits established by the Department.

R414-21-5. Services Provided Through Home Health Agencies.

(1) If a physical therapy service is provided outside of the physical therapists treatment facility, the provider must obtain prior authorization from the Department for each physical therapy session, including the evaluation. to assure that the sessions are within the amount, duration, and scope limits established by the Department and that the recipient could not obtain the service at the physical therapist's treatment facility.

(2) The Department does not cover occupational therapy services that are not provided at the occupational therapist's treatment facility.

R414-21-6. Reimbursement.

(1) Physical and occupational therapy is reimbursed using the fee schedule established in the Utah Medicaid State Plan and incorporated by reference in Section R414-1-5.

(2) Services provided by a physical therapy assistant or aide or by an occupational therapy assistant must be billed as part of the services provided by the supervising physical or occupational therapist.

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26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-38. Personal Care Service.
R414-38-1. Introduction and Authority.

Personal Care Service is an optional Medicaid Title XIX service, and is authorized by Section 1905(a)(18) of the Social Security Act and 42 CFR 440.170(f), 1992 ed., which are adopted and incorporated by reference.

R414-38-2. Definitions.

In addition to the definitions in R414-1, the following definitions also apply to this rule:

(1) "Home health agency" means a public agency or private organization which is licensed by the Department of Health under authority of Title 26, Chapter 21.

(2) "Relative" means a spouse, parent, step-parent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

R414-38-3. Client Eligibility Requirements.

Personal care service is available to categorically and medically needy individuals who meet the following conditions:

(1) The client is non-bedbound.

(2) The client is unable to perform two or more of the following personal care tasks:

(a) self-administration of medications due to memory lapse;

(b) body waste elimination, including the use of a urinal, commode, or bedpan;

(c) bathing or showering, including getting in or out of the tub or shower;

(d) skin care;

(e) ambulation, including use of cane, crutches, walker, wheelchair, or other assistive device;

(f) personal grooming, including oral care, hair care, shaving (with electric razor), dressing, and nail care;

(g) nutritional requirements, including meal planning, preparation, cleanup, and motivation to eat.

(3) The client's family is unable or unwilling to provide the extent of personal care service needed.

(4) The client needs personal care to:

(a) maintain the capacity to function, retard disease progression, or prevent regression and complications; or

(b) achieve satisfactory level of comfort and dignity during terminal stages of an illness; or

(c) receive assistance while recovering from an acute condition.

R414-38-4. Program Access Requirements.

(1) A physician must prescribe the necessary personal care services.

(2) Only a home health agency licensed in accordance with Title 26, Chapter 21, may provide personal care services.

(3) Only a personal care aide or home health aide (performing only personal care level tasks) who has obtained a certificate of completion from the State Office of Education, or a licensed practical nurse, or a registered nurse, may provide the personal care services.

(4) A licensed registered nurse must supervise the providing of personal care services.

(5) Personal care services are a covered service only for clients who receive these services in their residence, not in an institution.

(6) Initially, a licensed registered nurse must complete a personal care assessment to assess the client's functional level, the adaptability of the client's residence to the providing of personal care, and to identify family support systems or individuals willing to assume the responsibility for care when the client is unable to do so. A licensed registered nurse must also complete a personal care assessment at least at the required time of recertification (approximately every six months), or sooner if the client's condition warrants it.

R414-38-5. Service Coverage.

(1) Services provided by the personal care provider may include:

(a) reminding the client to take medication, and observing the client who is able to self-administer medication;

(b) providing minimal assistance with, or supervision of, bathing and personal hygiene including shampoo and hair care, skin care according to the client's plan of care, and shaving (with electric razor only);

(c) providing nail care as outlined in the client's plan of care;

(d) providing meal service, including special diets, meal planning, preparation, feeding if necessary, and cleanup;

(e) providing oral hygiene, including tooth or denture care;

(f) assisting with ambulation, including arm support, use of cane, crutches, walker, wheelchair, or other assistive device;

(g) assisting with bladder and bowel requirements or problems, including helping the client to and from the bathroom, or assisting non-bedbound clients with bedpan routines, but excluding assistance with enemas, suppositories, or ostomy care;

(h) making brief occasional trips outside the home for the client to receive medical examination or treatment, or for shopping to meet the client's health care or nutritional needs;

(i) taking proper measures for the client's safety and comfort, including good hand washing techniques, proper disposal of body waste, and explanation and application of smoking precautions;

(j) administering emergency first aid;

(k) observing and reporting significant changes in the client or the home environment;

(l) performing household services (if related to a medical need) as are essential to the client's health and comfort in the home, e.g., changing of bed linens, or rearranging furniture to enable the client to move about more easily in the home.

(2) Medicaid may not reimburse the home health agency for personal care services provided by the client's relatives.

(3) Providers may not provide personal care services for a client on the same day that Medicaid home health aide services are provided.

(4) Personal care services are limited to 60 hours per month.

R414-38-6. Plan of Care.

(1) The attending physician must write the orders on which the plan of care is established and certify the need for personal care services.

(2) The home health agency staff must develop the plan of care, in consultation with the attending physician and based upon the physician's orders, and deliver the personal care services according to this plan.

(3) The home health agency's licensed registered nurse must sign the plan of care, and incorporate it into the client's permanent record.

(4) The home health agency's licensed registered nurse must record and sign all of the physician's oral orders, and obtain the physician's signature on these orders.

(5) The home health agency staff must alert the attending physician promptly of any changes in the client's condition that suggest a need to alter the plan of care.

R414-38-7. Recertification.

The attending physician must review the total plan of care as often as the severity of the client's functional limitation requires, or at least once every six months. The home health agency's licensed registered nurse must sign this review.

R414-38-8. Supervision.

(1) The licensed registered nurse must make a supervisory visit to the client's residence at least once every two months, to assure that care is adequate and provided according to written instructions.

(2) The licensed registered nurse may make this visit either when the personal care aide is present to observe and assist, or when the personal care aide is absent, to assess relationships and determine whether goals are being met.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) Community Supports Waiver for Home and Community Based Services;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Brain Injury Home and Community Based Services Waiver;
(15) Physical Disabilities Waiver; and
(16) Cancer Program.

R414-303-2. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.

(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, 2009 ed., which are incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2009, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2009, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, 2009 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, 416.1015(a) through (e), and 416.1016, 2009 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the Medicaid eligibility agency of its disability decision, who then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the Medicaid eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Medicaid eligibility agency notifies the individual of the reconsideration decision. Thereafter, the individual may choose to pursue or abandon the fair hearing.

(5) If the Medicaid eligibility agency denies an individual's Medicaid application because the Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the Medicaid eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2009, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2009, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2009, for a given year, or as subsequently authorized by Congress. The Medicaid eligibility agency will deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) $90 will be deducted from the monthly gross earned income for each employed person.

(iii) The $30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be $200.00 per child under age two, and $175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is $160.00 per child under age two, and $140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative?s household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-5. 12 Month Transitional Family Medicaid.

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).

R414-303-6. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-7. Foster Care and Independent Foster Care Adolescents.

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-10. Refugee Medicaid.

(1) The Department provides medical assistance to refugees in accordance with the provisions of 45 CFR 400.90 through 400.107 and 45 CFR, Part 401.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

(7) The Department provides medical assistance to Iraqi and Afghan Special Immigrants in the same manner as medical assistance provided to other refugees.

R414-303-11. Poverty-Level Pregnant Woman and Poverty-level Child Medicaid.

(1) The Department incorporates by reference Title XIX of the Social Security Act, Sections 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) for pregnant women and children under age 19, 1902(e)(4) and (5) and 1902(l), in effect January 1, 2011 which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman, or a child under age 19, based on self-declaration that the pregnant woman, or the child under age 19, meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider has verified that she is pregnant and determines, based on preliminary information, that the woman:

(a) meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(c) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(6) The Department provides medical assistance in accordance with Section 1920A of the Social Security Act to children under age 19 during a period of presumptive eligibility if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) for a child under age 6, the declared household income does not exceed 133% of the federal poverty guideline applicable to the declared household size;

(c) for a child age 6 through 18, the declared household income does not exceed 100% of the federal poverty guideline applicable to the declared household size; and

(d) the child is not already covered on Medicaid or CHIP.

(7) No resource test applies to determine presumptive

eligibility of a child.

(8) A child may receive medical assistance during only one period of presumptive eligibility in any six-month period.

(9) The Department elects to impose a resource standard on poverty-level child Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(10) The Department elects to provide Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(11) At the initial determination of eligibility for Poverty-level Pregnant Woman Medicaid, the eligibility agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Poverty-level Pregnant Woman Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive Poverty-level Pregnant Woman Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2011.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the eligibility agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(12) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(13) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(14) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the poverty-level child program through the month in which they turn 19. A child determined presumptively eligible may receive presumptive eligibility only through the applicable period or until the end of the month in which the child turns 19, whichever occurs first. The eligibility agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

R414-303-12. Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

R414-303-13. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to

determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to $125.

R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-17. Physical Disabilities Waiver.

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.

R414-303-18. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or

cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups, independent foster care adolescent
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Notice of Continuation January 25, 2008 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
R414-308-1. Authority and Purpose.

(1) This rule is authorized by Section 26-18-3.

(2) The purpose of this rule is to establish requirements for medical assistance applications, eligibility decisions and reviews, eligibility period, verifications, change reporting, notification and improper medical assistance for the following programs:

(a) Medicaid;

(b) Qualified Medicare Beneficiaries;

(c) Specified Low-Income Medicare Beneficiaries; and

(d) Qualified Individuals.

R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Cost of care" means the amount of income that an institutionalized individual must pay to the medical facility for long-term care services based on the individual's income and allowed deductions.

(b) "Department" means the Utah Department of Health.

(c) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(d) "Due process month" means the month that allows time for the recipient to return all verification, and for the eligibility agency to determine eligibility and notify the recipient.

(e) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for Medicaid under contract with the Department.

(f) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(g) "Open enrollment" means a period of time when the eligibility agency accepts applications.

R414-308-3. Application and Signature.

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for medical assistance and delivering it to the eligibility agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the eligibility agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) When completing an on-line application, the individual must either send the eligibility agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and cannot appoint a representative.

(2) The application date is the day that the eligibility agency receives the request or verification from the recipient. The eligibility agency treats the following situations as a new application without requiring a new application form. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the open enrollment period requirement during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request in the calendar month that follows the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment, the applicant must wait for an open enrollment period to reapply.

(3) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply.

(4) A child under the age of 19, or a pregnant woman who is eligible for a presumptive eligibility period, must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act.

(5) The eligibility agency shall process low-income subsidy application data transmitted from the Social Security Administration (SSA) in accordance with 42 U.S.C. Sec. 1935(a)(4) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost-sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the

eligibility agency receives the application for Medicaid.

(6) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday. The following rules apply in determining the application date:

(a) If the eligibility agency receives an application after the close of business, the date of application is the next business day;

(b) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff receives the application;

(i) If the applicant delivers the application on a non-business day or after normal business hours, the date of application is the last business day that a staff person from the eligibility agency was available at the outreach location to receive or pick up the application;

(c) When the eligibility agency receives application data transmitted from SSA pursuant to the requirements of 42 U.S.C. Sec. 1396u-5(a)(4), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy to the SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs.

(7) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

(8) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Section R414-308-6 apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is when the eligibility agency receives a new application.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960, 2010 ed., which are incorporated by reference.

(a) The eligibility agency shall provide the applicant or recipient a written request of the needed verification.

(b) The applicant or recipient has at least ten calendar days from the date that the eligibility agency gives or sends the verification request to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request.

(d) An applicant or recipient must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.

(e) The eligibility agency shall allow the applicant or recipient more time to provide verification if he requests more time by the due date. The eligibility agency shall set a new due date based on what the applicant or recipient needs to do to obtain the verification and whether he shows a good faith effort to obtain the verification.

(f) If an applicant or recipient does not provide verification by the due date and does not contact the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application or review, or end eligibility.

(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.

(2) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(3) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the individual fails to provide verification, the eligibility agency shall end eligibility within 30 days after the 90-day period. The eligibility agency may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13 through 455.23.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The eligibility agency shall determine whether the applicant is eligible within the time limits established in 42 CFR 435.911, 2010 ed., which is incorporated by reference. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 2010 ed., which are incorporated by reference; and 42 CFR 435.912 and 435.919, 2010 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

(4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost of care contribution for waivers, when the recipient sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

(i) a spenddown of excess income for medically needy Medicaid coverage;

(ii) a Medicaid Work Incentive (MWI) premium;

(iii) an asset copayment for poverty level, pregnant woman coverage; and

(iv) a cost of care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost of care contribution is due each month for a recipient to receive Medicaid coverage. A recipient must pay an asset copayment before eligibility is granted for poverty level, pregnant woman coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost of care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost of care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost of care contribution subject to the limitations in Section R414-304-9. An unpaid cost of care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost of care contribution for home and community-based waiver services.

(g) Eligibility for the poverty level, pregnant woman program does not exist when the recipient fails to pay a required asset copayment.

(h) The eligibility agency shall continue eligibility for a resident of a nursing home even when an eligible resident fails to pay the nursing home the cost of care contribution. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month in which the time limit ends;

(e) for the poverty level, pregnant woman program, the last day of the month which is at least 60 days after the date that the pregnancy ends, except that for poverty-level, pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date that the individual dies.

(3) A presumptive eligibility period begins on the day that the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day that the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

(4) For an individual selected for coverage under the Qualified Individuals Program, the eligibility agency shall extend eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

(5) The eligibility agency shall complete a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, at least once every 12 months. The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

(6) The eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

(7) The eligibility agency shall use available, reliable sources to gather information needed to complete the review.

The eligibility agency may complete an eligibility review without requiring the recipient to provide additional information.

(8) The eligibility agency may ask the recipient to respond to a request to complete the review process during the review month. If the recipient fails to respond to the request, the eligibility agency shall end eligibility effective at the end of the review month and send proper notice to the recipient. If the recipient responds to the review or reapplies in the month that follows the review month, the eligibility agency shall consider the response to be a new application. The application processing period shall apply for the new request for coverage.

(a) The eligibility agency may ask the recipient for verification to redetermine eligibility.

(b) Upon receiving the verification, the eligibility agency shall redetermine eligibility and notify the recipient.

(i) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date.

(ii) If the recipient fails to return verification within the application processing period or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) If the case is closed for one or more calendar months, the recipient must reapply.

(9) If the recipient responds to the request during the review month, the eligibility agency may request verification from the recipient.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The recipient has at least ten calendar days from the notice date to provide the requested verification to the eligibility agency.

(10) If the recipient responds to the review and provides all verification by the due date within the review month, the eligibility agency shall determine eligibility and notify the recipient of its decision.

(a) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(b) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. This additional month of eligibility is called the due process month. Upon completing an eligibility determination, the eligibility agency shall send proper notice of the effective date of any adverse decision.

(11) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the due process month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

(12) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

(13) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

R414-308-7. Change Reporting and Benefit Changes.

(1) A recipient must report to the eligibility agency reportable changes in the recipient's circumstances. Reportable changes are defined in Section R414-301-2.

(a) The due date for reporting changes is the close of business ten calendar days after the recipient learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income for the recipient, the due date for reporting the income change is the close of business ten calendar days after the change.

(c) The date of report is the date that the recipient reports the change to the eligibility agency during normal business hours, or the date that the eligibility agency receives the information from another source.

(2) The eligibility agency may receive information from credible sources other than the recipient such as computer income matches and from anonymous citizen reports. The eligibility agency shall verify information from other sources that may affect the recipient's eligibilitybefore using the information to change the recipient's eligibility for medical assistance. The eligibility agency shall verify information from citizen reports through other reliable proofs.

(3) If the eligibility agency needs verification from the recipient, the agency shall send the recipient a written request. The eligibility agency shall give the recipient at least ten calendar days from the notice date to respond. The due date for providing verification of changes is the close of business on the date that the eligibility agency sets as the due date in a written notice to the recipient.

(4) A recipient must provide change reports, forms or verifications to the eligibility agency by the close of business on the due date.

(5) If the information about a change causes an increase in a recipient's benefits and the eligibility agency asks the recipient for verification, the eligibility agency shall increase benefits as follows:

(a) An increase in benefits is effective on the first day of the month after the change report month if the recipient returns all verification within ten calendar days of the request date or by the end of the change report month, if longer;

(b) An increase in benefits is effective on the first day of the month after the date that the eligibility agency receives all verification if the recipient does not return verification by the due date, but returns verification in the calendar month that follows the report month.

(6) If the reported information causes an increase in a recipient's benefits and the eligibility agency does not request verification, the increase in benefits is effective on the first day of the month that follows the change report month.

(7) If a change adversely affects the recipient's eligibility for benefits, the eligibility agency shall change the effective date of eligibility to the first day of the month after the month in

which it sends proper notice of the change.

(a) The eligibility agency shall change the effective date if it has enough information to adjust benefits, regardless of whether the recipient returns verification.

(b) The eligibility agency shall send a written request to the recipient for verification if it does not have enough information to adjust benefits. The recipient has at least ten days after the date of the request to return verification.

(i) Upon receiving verification, the eligibility agency shall adjust benefits to become effective on the first day of the month after the agency sends proper notice.

(ii) If the recipient does not return verification timely, the eligibility agency shall discontinue benefits after the month in which the agency sends proper notice.

(8) If the recipient returns all requested verification related to a change report in the month that follows the effective closure date, the eligibility agency shall treat the date of receipt as an application date and may not require the recipient to complete a new application form. The eligibility agency shall review the verification to determine whether the recipient is still eligible and notify the recipient of its decision. The eligibility agency may not change the review date unless it updates all factors of eligibility.

(9) If the eligibility agency cannot determine the effect of a change without verification from the recipient, the agency shall discontinue benefits if it does not receive the requested verification by the due date. If a change does not affect all household members and the recipient does not return verification, the eligibility agency shall discontinue benefits only for those individuals affected by the change.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change on time or returned verification by the due date.

(b) If a recipient fails to report a change timely or return verification or forms by the due date, the recipient must repay all services and benefits paid by the Department for which the recipient is ineligible.

(11) If a due date falls on a non-business day, the due date is the close of business on the next business day.

R414-308-8. Case Closure and Redetermination.

(1) The eligibility agency shall end medical assistance when the recipient requests the agency to close his case, when the recipient fails to respond to a request to complete the eligibility review, when the recipient fails to provide all verification needed to determine continued eligibility, or when the agency determines that the recipient is no longer eligible.

(2) If a recipient fails to complete the review process in accordance with Section R414-308-6, the eligibility agency shall close the case and notify the recipient.

(3) Before terminating a recipient's medical assistance, the eligibility agency shall determine whether the recipient is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost Sharing programs, the Children's Health Insurance Program (CHIP), the Primary Care Network (PCN), and Utah's Premium Partnership for Health Insurance (UPP).

(a) The eligibility agency may not require a recipient to complete a new application to make the redetermination. The agency, however, may request more information from the recipient to determine whether the recipient is eligible for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When determining eligibility for other programs, the eligibility agency may only enroll an individual in a medical assistance program during an open enrollment period, or when that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollment is closed. Open enrollment applies only to the PCN and UPP programs.

R414-308-9. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible. This assistance includes benefits that an individual receives pending a fair hearing or during an undue hardship waiver when the individual fails to take actions required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays in excess or not enough for medical assistance benefits on behalf of an eligible individual.

(2) As applied in this section, services and benefits include all amounts that the Department pays on behalf of the recipient during the period in question and includes:

(a) premiums that the recipient pays to any Medicaid health plan or managed care plan including any payments for administration costs, Medicare, and private insurance plans;

(b) payments for prepaid mental health services; and

(c) payments made directly to service providers or to the recipient.

(3) If the eligibility agency determines that a recipient is ineligible for the services and benefits that he receives, the recipient must repay to the Department any costs that result from the services and benefits.

(4) The eligibility agency shall reduce the amount that the recipient must repay by the amount that the recipient pays to the eligibility agency for a Medicaid spenddown, a cost of care contribution, or a MWI premium for the month.

(5) If a recipient who pays an asset copayment for coverage under Prenatal Medicaid is found to be ineligible for the entire period of coverage under Prenatal Medicaid, the eligibility agency shall reduce the amount that the recipient must repay by the amount that the recipient pays to the agency in the form of the prenatal asset copayment.

(6) If the recipient is eligible but the overpayment is because the spenddown, the MWI premium, the asset copayment for prenatal services, or the cost of care contribution is incorrect, the recipient must repay the difference between the correct amount that the recipient should pay and the amount that the recipient has paid.

(7) If the eligibility agency determines that the recipient is ineligible due to having resources that exceed the resource limit, the recipient must pay the lesser of the cost of services or benefits that the recipient receives, or the difference between the recipient's countable resources and the resource limit for each month resources exceed the limit.

(8) A recipient may request a refund from the Department if the recipient believes that:

(a) the monthly spenddown, the asset copayment for prenatal services, or cost of care contribution that the recipient pays to receive medical assistance is less than what the Department pays for medical services and benefits for the recipient; or

(b) the amount that the recipient pays in the form of a spenddown, a MWI premium, a cost of care contribution for long-term care services, or an asset copayment for prenatal services exceeds the payment requirement.

(9) Upon receiving the request, the Department shall determine whether it owes the recipient a refund.

(a) In the case of an incorrect calculation of a spenddown, MWI premium, cost of care contribution, or asset copayment for

poverty level, pregnant woman services, the refundable amount is the difference between the incorrect amount that the recipient pays to the Department for medical assistance and the correct amount that the recipient should pay, less the amount that the recipient owes to the Department for any other past due, unpaid claims.

(b) If the spenddown, asset copayment for poverty level, pregnant woman services, or a cost of care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown, asset copayment, or cost of care contribution that the recipient pays for medical assistance and the amount that the Department pays on behalf of the recipient for services and benefits, less the amount that the recipient owes to the Department for any other past due, unpaid claims. The Department shall issue the refund only after the 12-month time period that medical providers have to submit claims for payment.

(c) The Department may not issue a cash refund for any portion of a spenddown or cost of care contribution that is met with medical bills. Nevertheless, the Department may pay additional covered medical bills used to meet the spenddown or cost of care contribution equal to the amount of refund that the Department owes the recipient, or apply the bill amount toward a future spenddown or cost of care contribution.

(10) A recipient who pays a premium for the MWI program may not receive a refund even when the Department pays for services that are less than the premium that the recipient pays for MWI.

(11) If the cost of care contribution that a recipient pays a medical facility is more than the Medicaid daily rate for the number of days that the recipient is in the medical facility, the recipient may request a refund from the medical facility. The Department shall refund the amount that it owes the recipient only when the medical facility sends the excess cost of care contribution to the Department.

(12) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department shall recover the overpayment from both the alien and the sponsor.

KEY: public assistance programs, applications, eligibility, Medicaid
April 1, 2012 26-18
Notice of Continuation January 31, 2008

R428. Health, Center for Health Data, Health Care Statistics.
R428-15. Health Data Authority Health Insurance Claims Reporting.
R428-15-1. Legal Authority.

This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in R428-1.

R428-15-2. Purpose.

This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

R428-15-3. Definitions.

These definitions apply to rule R428-15, in addition:

(1) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(2) "Carrier" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in 31A-1-301 (74), including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in 31A-1-301 (159), licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in 31A-1-301 (148)

(c) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code;

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy or health benefit plan funded by a self-insurance arrangement; or

(f) a dental stand-alone company as defined in 31A-8-101 (6).

(3) "Claim" means a request or demand on a carrier for payment of a benefit.

(4) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(5) "Health Insurance" has the same meaning as found in Subsection 31A-1-301.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R428-15-4. Reporting Requirements.

(1) Each carrier shall submit enrollment, medical claims, and pharmacy data described in R428-15-6 where Utah is the patient's primary residence and enrollment, medical claims, and pharmacy data for services provided out of state to Utah residents.

(2) Each carrier shall begin submitting the required data to the office no later than October 17, 2009. The initial data submission must be completed by November 15, 2009. The initial data submission shall be for claims incurred from January 1, 2007 through December 31, 2008 and which are paid through September 30, 2009. Thereafter, each carrier shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

R428-15-5. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

R428-15-6. Required Data Elements.

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each carrier shall submit data for all fields contained in the submission specifications if the data are available to the carrier.

(a) Each carrier must submit enrollment files as a flat file.

(b) Each carrier must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional claim.

(c) Each carrier must submit pharmacy claims as a flat file.

(2) Enrollment Files. Each carrier must submit the following data elements for each enrollment file:

(a) Record Type
(b) Transaction Code
(c) File Create Date
(d) Member ID
(e) Social Security Number
(f) Member's Relationship to Subscriber
(g) Last Name
(h) First Name
(i) Middle Name
(j) Sex
(k) Street
(l) City
(m) State
(n) Zip Code
(o) Primary Phone
(p) Birth date
(q) Race
(r) Ethnicity
(s) Primary/Secondary
(t) Designated Primary Care Physician
(u) PCP ID
(v) Healthplan Code
(w) Benefit Option Code
(x) Option Effective Date
(y) HP Termination Date
(z) Employer Group Code
(aa) Patient ID
(bb) Health Plan Description
(cc) Orig. HP Effective Date
(dd) Member Status.

(3) Professional Medical Claims. Each carrier must submit the following data elements for each professional medical claim:

(a) Data Element - Data Element Description
(b) BHT06 - BHT Beginning of Hierarchical Trans
(c) GS08 - Functional Group Header
(d) GS07 - Functional Group Header

(e) Submitter Information
(i) 1000A NM103 - Submitter Name
(ii) 1000A NM109 - Submitter Identifier
(iii) 1000A PER01-05 - Submitter EDI Contact Information
(f) 1000B NM103 - Receiver Name
(g) 1000B NM109 - Receiver Identifier
(h) Billing Provider
(i) 2010AA NM103 - Billing Provider Name
(ii) 2010AA NM109 - Billing Provider ID
(iii) 2010AA REF02 - Billing Provider Secondary ID
(i) 2000B SBR02 - Individual Relationship Code
(j) 2000B SBR03 - Insured Group or Policy Number
(k) 2010BB NM103 - Payer Name
(l) Subscriber Information
(i) 2010BA NM103 - Subscriber Lname
(ii) 2010BA NM104 - Subscriber Fname
(iii) 2010BA NM105 - Subscriber Middle Name
(iv) 2010BA NM109 - Subscriber Primary Identifier
(v) 2010BA N301 - Subscriber Address1
(vi) 2010BA N302 - Subscriber Address2
(vii) 2010BA N401 - Subscriber City Name
(viii) 2010BA N402 - Subscriber State
(ix) 2010BA N403 - Subscriber Zip Code
(x) 2010BA DMG20 - Subscriber Date of Birth
(xi) 2010BA DMG03 - Subscriber Sex
(xii) 2010BA REF01 - Subscriber Secondary ID Qualifier
(xiii) 2010BA REF02 - Subscriber Secondary ID
(m) Patient Information
(i) 2000C PAT01 - Patients Relationship to Insured
(ii) 2010CA NM103 - Patient Lname
(iii) 2010CA NM104 - Patient Fname
(iv) 2010CA NM105 - Patient Middle Name
(v) 2010CA NM109 - Patient Primary Identifier
(vi) 2010BA/2010CA N301 - Patient Address1
(vii) 2010CA N302 - Patient Address2
(viii) 2010CA N401 - Patient City Name
(ix) 2010CA N402 - Patient State
(x) 2010CA N403 - Patient Zip Code
(xi) 2010CA DMG02 - Patient Date of Birth
(xii) 2010CA DMG03 - Patient Sex
(xiii) 2010CA REF01 - Patient Secondary ID Qualifier
(xiv) 2010CA REF02 - Patient Secondary ID
(n) 2300 CLM05-1 - Facility Type Code
(o) 2300 CLM05-3 - Claim Frequency Type Code
(p) 2300 REF02 When REF01 = F8 - Original Reference Number
(q) 2300 CLM01 - Patient Account Number
(r) 2300 REF02 When REF01 = EA - Medical Record Number
(s) 2300 CLM02 - Total Claim Charge Amount
(t) 2300 AMT02 When AMT01 = F5 - Patient Paid Amount
(u) 2320 AMT02 When AMT01 = D - COB Payer Paid Amount
(v) 2310D NM103 - Service Facility Name
(w) 2310D NM109 - Service Facility ID Code
(x) 2330B DTP03 When DTP01 = 573 - Claim Adjudication Date
(y) 2320 AMT02 When AMT01 = B6 - COB Allowed Amount
(z) Claim Adjustment Information
(i) 2320 CAS01 - Claim Adjustment Group Code
(ii) 2320 CAS02 - Claim Adjustment Reason Code
(iii) 2320 CAS03 - Claim Level Adjustment Amount
(aa) 2310D NM109 - Laboratory or Facility Primary Identifier
(bb) Diagnosis Information
(i) 2300 HI01 -2 - Principal Diagnosis
(ii) 2300 HI02 -2
(iii) 2300 HI03 -2
(iv) 2300 HI04 -2
(v) 2300 HI05
(vi) 2300 HI06 -2
(vii) 2300 HI07 -2
(viii) 2300 HI08 -2
(ix) 2300 HI09 -2
(x) 2300 HI10
(xi) 2300 HI11 -2
(xii) 2300 HI12 -2
(cc) 2310B PRV03 or 2000A - Rendering Provider Specialty
(dd) Rendering Provider Information
(i) 2310B NM103 - Rendering Provider LName
(ii) 2310B NM104 - Rendering Provider FName
(iii) 2310B NM105 - Rendering Provider Name Middle
(iv) 2310B NM107 - Rendering Provider Name Suffix
(v) 2310B NM109 - Rendering Provider Primary Identifier
(vi) 2310B REF02 - Rendering Provider Secondary ID
(ee) 2400 LX01 - Line Counter
(ff) 2400 DTP03 WHEN DTP01 = 472 - Date(s) of Service
(gg) Provider Modifiers
(i) 2400 SV101-2
(ii) 2400 SV101-3
(iii) 2400 SV101-4
(iv) 2400 SV101-5
(v) 2400 SV101-6
(hh) 2400 SV104 - Days or Units
(ii) 2400 SV102 - Line Item Charge Amount
(jj) 2400 AMT02 - Allowed Amount
(kk) 2410 LIN03 - Drug Identification
(ll) 2410 REF02 When REF01 = XZ - Prescription Number
(mm) Drug Information
(i) 2410 CTP05-1 - Drug Units Qualifier
(ii) 2410 CTP04 - Drug Number of Units
(iii) 2410 CTP03 - Drug Cost or Unit Price
(nn) Line Adjustment Codes
(i) 2430 CAS01 - Line Adjustment Group Code
(ii) 2430 CAS02 - Line Adjustment Reason Code
(iii) 2430 CAS03 - Line Level Adjustment Amount.

(4) Institutional Medical Claims. Each carrier must submit the following data elements for each institutional medical claim:
(a) BHT01 BHT06 - Hierarchical Structure Code
(b) GS08 - Functional Group Header
(c) GS01 - Functional Group Header
(d) Submitter Information
(i) 1000A NM103 - Submitter Name
(ii) 1000A NM109 - Submitter Identifier
(iii) 1000A PER01-05 - Submitter EDI Contact Information
(e) 1000B NM103 - Receiver Name
(f) 1000B NM109 - Receiver Identifier
(g) Billing Provider Information
(i) 2010AA NM103 - Billing Provider Name
(ii) 2010AA NM109 - Billing Provider ID
(iii) 2010AA REF02 - Billing Provider Secondary ID
(h) 2000B SBR02 - Individual Relationship Code
(i) 2000B SBR03 - Insured Group or Policy Number
(j) 2010BC NM103 - Payer Name
(k) Subscriber Information
(i) 2010BA NM103 - Subscriber Lname
(ii) 2010BA NM104 - Subscriber Fname
(iii) 2010BA NM105 - Subscriber Middle Name
(iv) 2010BA NM109 - Subscriber Primary Identifier
(v) 2010BA N301 - Subscriber Address1
(vi) 2010BA N302 - Subscriber Address2

(vii) 2010BA N401 - Subscriber City Name
(viii) 2010BA N402 - Subscriber State
(ix) 2010BA N403 - Subscriber Zip Code
(x) 2010BA DMG02 - Subscriber Date of Birth
(xi) 2010BA DMG03 - Subscriber Sex
(xii) 2010BA REF01 - Subscriber Secondary ID Qualifier
(xiii) 2010BA REF02 - Subscriber Secondary Identification
(l) Patient Information
(i) 2000C PAT01 - Patients Relationship to Insured
(ii) 2010CA NM103 - Patient Lname
(iii) 2010CA NM104 - Patient Fname
(iv) 2010CA NM105 - Patient Middle Name
(v) 2010CA NM109 - Patient Primary Identifier
(vi) 2010BA/2010CA N301 - Patient Address1
(vii) 2010CA N302 - Patient Address2
(viii) 2010CA N401 - Patient City Name
(ix) 2010CA N402 - Patient State
(x) 2010CA N403 - Patient Zip Code
(xi) 2010CA DMG02 - Patient Date of Birth
(xii) 2010CA DMG03 - Patient Sex
(xiii) 2010CA REF01 - Patient Secondary ID Qualifier
(xiv) 2010CA REF02 - Patient Secondary Identification
(m) 2300 CLM05-1 - Facility Type Code
(n) 2300 CLM05-3 - Claim Frequency Type Code
(o) 2300 REF02 When REF01 = F8 - Original Reference Number
(p) 2300 DTP03 When DTP01 = 435 - Admission Date/Hour
(q) Institutional Claim Code Information
(i) 2300 CL101 - Institutional Claim Code Admit Type
(ii) 2300 CL102 -Institutional Claim Code Admit Source
(iii) 2300 CL103 - Institutional Claim Code Pt Status
(r) 2300 HI01-2 When HI01-1 = DR - Diagnosis Related Group (DRG)
(s) 2300 DTP03 when DTP01 = 434 - Statement Date
(t) 2300 DTP03 WHEN DTP01 = 096 - Discharge Date
(u) 2300 DTP03 When DTP01 = 096 - Discharge Hour
(v) 2300 CLM01 - Patient Account Number
(w) 2300 REF02 When REF01 = EA - Medical Record Number
(x) 2300 CLM02 - Total Claim Charge Amount
(y) 2300 AMT02 When AMT01 = F5 - Patient Paid Amount
(z) 2320 AMT02 WHEN AMT01 = C4 - Payer Prior Payment
(aa) 2310E NM103 - Service Facility Name
(bb) 2310E NM109 - Service Facility ID Code
(cc) 2330B DTP03 WHEN DTP01 = 573 - Claim Adjudication Date
(dd) 2320 AMT02 When AMT01 = B6 - COB Total Allowed Amount
(ee) Claim Adjustment Information
(i) 2320 CAS01 - Claim Adjustment Group Code
(ii) 2320 CAS02 - Claim Adjustment Reason Code
(iii) 2320 CAS03 - Claim Level Adjustment Amount
(ff) 2310E NM109 - Laboratory or Facility Primary ID
(gg) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information PAT
(i) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 1
(ii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 2
(iii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 3
(hh) 2300 K3 - Present on Admission Indicator
(ii) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information Admitting DX
(i) 2300 HI02-2 When HI02-1 = BJ
(ii) 2300 HI01-2 When HI01-1 = BK
(jj) Other Diagnosis Information
(i) 2300 HI01-2 When HI01-1 = BF
(ii) 2300 HI02-2 When HI02-1 = BF
(iii) 2300 HI03-2 When HI03-1 = BF
(iv) 2300 HI04-2 When HI04-1 = BF
(v) 2300 HI05-2 When HI05-1 = BF
(vi) 2300 HI06-2 When HI06-1 = BF
(vii) 2300 HI07-2 When HI07-1 = BF
(viii) 2300 HI08-2 When HI08-1 = BF
(ix) 2300 HI09-2 When HI09-1 = BF
(x) 2300 HI10-2 When HI10-1 = BF
(xi) 2300 HI11-2 When HI11-1 = BF
(xii) 2300 HI12-2 When HI12-1 = BF
(kk) Principal, Admitting, E-Code and Patient Reason for Visit Diagnosis Information
(i) 2300 HI03-2 When HI03-1 = BN E-Code 1
(ii) 2300 HI03-2 When HI03-1 = BN E-Code 2
(iii) 2300 HI03-2 When HI03-1 = BN E-Code 3
(ll) 2300 HI01-2 When HI01-1 = BR Principal Procedure Code Principal Procedure
(mm) 2300 HI01-4 When HI01-1 = BR Principal Procedure Date
(nn) Other Procedure Codes and Dates
(i) 2300 HI01-2 When HI01-1 = BQ Other Procedure Code
(ii) 2300 HI01-4 When HI01-1 = BQ Other Procedure Date
(iii) 2300 HI02-2 When HI02-1 = BQ Other Procedure Code
(iv) 2300 HI02-4 When HI02-1 = BQ Other Procedure Date
(v) 2300 HI03-2 When HI03-1 = BQ Other Procedure Code
(vi) 2300 HI03-4 When HI03-1 = BQ Other Procedure Date
(vii) 2300 HI04-2 When HI04-1 = BQ Other Procedure Code
(viii) 2300 HI04-4 When HI04-1 = BQ Other Procedure Date
(ix) 2300 HI05-2 When HI05-1 = BQ Other Procedure Code
(x) 2300 HI05-4 When HI05-1 = BQ Other Procedure Date
(oo) Attending Physician Information
(i) 2000A or 2310A PRV03 - Attending Physician Specialty Information
(ii) 2310A NM103 - Attending Physician LName
(iii) 2310A NM104 - Attending Physician FName
(iv) 2310A NM105 - Attending Physician Name Middle
(v) 2310A NM107 - Attending Physician Name Suffix
(vi) 2310A NM109 - Attending Physician Primary ID
(vii) 2310A REF02 - Attending Physician Secondary ID
(pp) 2400 LX01 - Line Counter
(qq) 2400 DTP03 When DTP01 = 472 Date(s) of Service
(rr) Institutional Service Line Codes
(i) 2400 SV202-2 - Institutional Service Line Product/Service ID
(ii) 2400 SV202-3 - Institutional Service Line Procedure Modifier - 1
(iii) 2400 SV202-4 - Institutional Service Line Procedure Modifier - 2
(iv) 2400 SV202-5 - Institutional Service Line Procedure Modifier - 3
(v) 2400 SV202-6 - Institutional Service Line Procedure Modifier - 4
(vi) 2400 SV201 - Institutional Service Line (Revenue Codes)
(ss) 2400 SV205 - Service Units
(tt) 2400 SV203 - Line Item Charge Amount
(uu) Drug Information
(i) 2410 LIN03 - Drug Identification

(ii) 2410 REF02 when REF01 = XZ - Prescription Number
(iii) 2410 CTP05-1 - Drug Units Qualifier
(iv) 2410 CTP04 - Drug Number of Units
(v) 2410 CTP03 - Drug Cost or Unit Price
(vv) Line Adjustment Codes
(i) 2430 CAS01 - Line Adjustment Group Code
(ii) 2430 CAS02 - Line Level Adjustment Reason Code
(iii) 2430 CAS03 - Line Level Adjustment Amount.
(5) Pharmacy claims. Each carrier must submit the following data elements for each pharmacy claim:
(a) Payer Name
(b) Insured Group or Policy Number
(c) Subscriber Information
(i) Subscriber Last Name
(ii) Subscriber First Name
(iii) Subscriber Middle Name
(iv) Subscriber Primary Identifier
(v) Subscriber Address
(vi) Subscriber Address 2
(vii) Subscriber City
(viii) Subscriber State
(ix) Subscriber Zipcode
(x) Subscriber Phone
(xi) Subscriber Date of Birth
(xii) Subscriber Sex
(xiii) Subscriber Secondary Identification Qualifier
(xiv) Subscriber Secondary Identification
(d) Patient Information
(i) Patients Relationship to Insured
(ii) Patient Last name
(iii) Patient First name
(iv) Patient Middle Name
(v) Patient Primary Identifier
(vi) Patient Address
(vii) Patient Address 2
(viii) Patient City
(ix) Patient State
(x) Patient ZipCode
(xi) Patient Phone
(xii) Patient Date of Birth
(xiii) Patient Sex
(xiv) Patient Secondary Identification Qualifier
(xv) Patient Secondary Identification
(e) RxClaimNo
(f) RxClaimNoCrossRef
(g) RxNo
(h) PBMMebID
(i) RXClaimTxnType
(j) RxType
(k) RxClaimXrefNo
(l) RxAdjType
(m) SubscriberSfx
(n) Prescriber Information
(i) RxPrescriberID
(ii) RxPrescriberNoType
(iii) RxPrescriberName
(o) RxPharmacyNo
(p) MembMcareSTatus
(q) RxWrittenDt
(r) RxFilledDt
(s) Reject Codes
(i) Reject Code 1
(ii) Reject Code 2
(iii) Reject Code 3
(iv) Reject Code 4
(v) Reject Code 5
(t) RxPaidDt
(u) RxTotalPdAmt
(v) PatientPaidAmount
(w) RxQualifier
(x) RxID
(y) RxNDC
(z) RxTradeNm
(aa) RxGenericNm
(bb) GCNNumber
(cc) GPINumber
(dd) UnitsOfMeasure
(ee) UnitDoseIndicator
(ff) DispensingStatus
(gg) QuantityIntended
(hh) RxMtrcFilQty
(ii) RxDaysSupplyNo
(jj) DrugStrength
(kk) DosageDescription
(ll) CompoundIndicator
(mm) RxNoRefills
(nn) RxRefillNo
(oo) RxDAWCode
(pp) Therapeutic ClassCode - AHFS
(qq) USC Code
(rr) DEA Class of Drug
(ss) Drug Class
(tt) Drug Category Code
(uu) RxBrandInd
(vv) RecordDateTimeStamp.

R428-15-7. Exemptions.
A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this rule.

R428-15-8. Third-party Contractors.
The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R428-15-9. Carrier Registration.
Each carrier shall register with the Office by completing the registration on line at: http://health.utah.gov/hda/apd/. Each carrier shall register by September 21, 2009 and annually thereafter by September 1 of each year.

R428-15-10. Testing of Files.
(1) Prior to October 5, 2009, each carrier required to report under this rule shall submit to the Office a dataset for determining compliance with the standards for data submission. This test dataset must be in the same format as required by the technical specifications document and shall contain data for any month within 2007 or 2008.
(2) Each carrier must meet with the Office prior to the carrier's initial data submission to review individual submission formatting. The carrier must contact the Office to arrange this meeting by September 30, 2009.
(3) Carriers that become subject to this rule after September 21, 2009 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R428-15-11. Rejection of Files.
The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the carrier must submit for each enrolled member and claim. A carrier whose submission is rejected shall resubmit the

data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.

R428-15-12. Replacement of Data Files.

A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the carrier can establish exceptional circumstances for the replacement.

R428-15-13. Limitation of Liability.

As provided in Utah Code Section 26-25-1, a carrier that submits data pursuant to this rule, including third-party administrators that submit employee data, is not liable for providing the information to the Department.

R428-15-14. Penalties.

Pursuant to Section 26-23-6, a carrier that violates any provision of this rule may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(1) Not to exceed the sum of $10,000 per violation

(2) Each day of violation is a separate violation.

KEY: APD, all payer database, health care quality, transparency

March 16, 2012 **26-33a**

26-25

R432. Health, Family Health and Preparedness, Licensing.
R432-31. Life with Dignity Order.
R432-31-1. Authority and Purpose.

(1) This rule is adopted pursuant to Utah Code Title 26, Chapter 21, and Section 75-2a-106.

(2) This rule establishes the forms and systems for Life with Dignity Orders.

R432-31-2. Definitions.

The definitions found in Sections UCA 26-21-2 and 75-2a apply to this rule. In addition, "licensed health care facility" means a facility or entity licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-31-3. Life with Dignity Order Forms.

(1) An individual who desires to execute a Life with Dignity Order must use a form created by the Department. The form may not be altered in layout or style, including font style and size, without the express written permission of the Department.

(2) Any person, health care provider or health care facility may obtain a form from the Department and, if made available by the Department, from a website established for that purpose.

(3) A health care provider, licensed health care facility, or EMS provider may act upon a copy of a Life with Dignity Order as if it were the original.

R432-31-4. Facilities That Must Offer Life with Dignity Orders-Policies and Procedures.

(1) The following health care facilities must comply with Subsection (2):

(a) a general acute hospital licensed under R432-100;

(b) a long-term acute care hospital licensed under R432-104;

(c) a nursing care facility licensed under R432-150;

(d) a mental disease facility licensed under R432-151;

(e) a mental retardation facility licensed under R432-152;

(f) a small health care facility (four to sixteen beds) licensed under R432-200;

(g) an assisted living facility licensed under R432-270;

(h) a small health care facility - type N licensed under R432-300;

(i) a hospice agency licensed under R432-750, whether inpatient or home-based;

(j) a critical access hospital licensed under R432-106;

(k) a home health agency licensed under R432-700; and

(l) a personal care agency licensed under R432-725.

(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:

(a) the facility determines upon admission whether each individual has a Life with Dignity Order;

(b) the facility determines which of those individuals who do not have a Life With Dignity Order should be offered the opportunity to complete a Life with Dignity Order;

(c) the facility identifies circumstances under which the facility shall review for changes or amendments the Life with Dignity Order for each individual who has one;

(d) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order; and

(e) the facility identifies circumstances under which it would not follow a Life With Dignity Order.

R432-31-5. Facilities Not Required to Offer Life with Dignity Orders-Policies and Procedures.

(1) The following health care facilities must comply with Subsection (2):

(a) a specialty hospital - psychiatric licensed under R432-101;

(b) a specialty hospital - chemical dependency/substance abuse licensed under R432-102;

(c) a freestanding ambulatory surgical center licensed under R432-500;

(d) a specialty hospital - rehabilitation licensed under R432-103;

(e) an orthopedic hospital licensed under R432-105;

(f) a birthing center licensed under R432-550;

(g) an abortion clinic licensed under R432-600; and

(h) an end stage renal disease facility licensed under R432-650.

(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:

(a) the facility determines upon admission whether each individual has a Life with Dignity Order;

(b) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order.

R432-31-6. Training.

Each licensed health care facility shall appropriately train relevant health care, quality improvement, and record keeping staff on the requirements of Title 75, Chapter 2a, the Advance Health Care Directive Act; this rule; and the facility's policies and procedures established pursuant to this rule.

R432-31-7. Transferability of Life with Dignity Orders.

(1)(a) A Life with Dignity Order is fully transferable between all health care facilities.

(b) The health care providers assuming the individual's care at the receiving licensed health care facility shall read the Life with Dignity Order.

(c) The receiving provider must have policies and procedures to address the circumstances under which the provider will not follow the instructions contained in the Life With Dignity Order.

(2)(a) A licensed health care facility that discharges, but does not transfer to another licensed health care facility, an individual who has a Life with Dignity Order, shall provide a copy of the individual's Life with Dignity Order to the individual or, if the individual lacks the capacity to make a health care decision, as defined in section 75-2a-104, to the individual's surrogate.

(b) A licensed health care facility that transfers an individual with a Life with Dignity Order to another licensed health care facility shall provide a copy of the Life with Dignity Order to the receiving licensed health care facility.

(3) A licensed health care facility shall allow an individual to complete, amend, or revoke a Life with Dignity Order at any time upon request.

R432-31-8. Presentation of Life with Dignity Orders to EMS Personnel.

(1) Except for home health agencies, personal care agencies and home-based hospice, a licensed health care facility in possession of a Life with Dignity Order must present the individual's Life with Dignity Order to EMS personnel upon the arrival of EMS personnel who are present to treat or transport the individual; and

(2) For an individual who resides at home, if home health agency, personal care agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel must present the individual's Life with Dignity Order, upon the arrival of the EMS personnel who are present to treat or transport the individual.

R432-31-9. Home Placement of Life with Dignity Orders.

(1) If an individual under the care of a home health agency, personal care agency or a hospice agency possesses a Life with Dignity Order, the agency must ensure that a copy of the Life with Dignity Order is left at the individual's place of residence.

(2) For an individual adult who resides at home, including an emancipated minor, it is recommended that a copy of the Life with Dignity Order be posted on the front of the refrigerator or over the individual's bed.

(3) For a minor who resides at home, it is recommended that a copy of the Life with Dignity Order be placed in a tube and placed on the top shelf of the door of the refrigerator.

R432-31-10. Life with Dignity Bracelets and Necklaces.

(1) The Department may contract with a vendor or vendors to provide an approved Life with Dignity bracelet or necklace.

(2) An individual with a Life with Dignity Order may obtain an approved Life with Dignity bracelet or necklace from a vendor approved by the Department. The approved Life with Dignity bracelet or necklace identifies the individual to EMS or other health care providers as possessing a Life with Dignity Order.

R432-31-11. Prior Orders and Out of State Orders.

(1) EMS and other health care providers may recognize as valid all POLST, Life With Dignity and EMS/DNR orders, including bracelets and necklaces, unless superseded by a subsequent Life with Dignity Order or POLST.

(2) Licensed health care facilities must ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders to comply with current rule requirements by January 31, 2011.

(3) Physicians may complete and sign new Life With Dignity Orders for individuals with prior forms who no longer have capacity to complete new orders, and who do not have a surrogate/guardian to authorize the new order. The physician must indicate on the new order that the individual's preferences from the prior order are still applicable.

(4) A form that an individual executed while in another state may be honored as if it were executed in compliance with this rule and Section 75-2a-106 if it:

(a) is substantially similar to a Life with Dignity Order or a Physician's Order for Life Sustaining Treatment; and

(b) was executed according to the laws of that state.

KEY: POLST, do not resuscitate, Life with Dignity Order
October 1, 2011 26-21
Notice of Continuation March 28, 2012 75-2a-106

R432. Health, Family Health and Preparedness, Licensing.
R432-40. Long-Term Care Facility Immunizations.
R432-40-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-40-2. Purpose.

Influenza and pneumococcal immunizations are recommended for persons aged 65 years and older and for persons of any age who have medical conditions that place them at high risk for complications of influenza. The purpose of this rule is to require long term care facilities to have policies and procedures in place to protect vulnerable patients and residents from vaccine preventable illnesses.

R432-40-3. Definitions.

As used in this rule:

"Long-term care facility" means a nursing care facility, small health care facility, assisted living type I and type II, intermediate care facility for the mentally retarded, and swing bed unit of a general acute care hospital

"Pneumococcal immunization" means an immunization using the 23-valent pneumococcal polysaccharide vaccine (PPV23).

R432-40-4. Policy and Procedures.

Each long-term health care facility shall implement written policies and procedures that include:

(1) a comprehensive assessment and immunization program for residents and employees;

(2) how and when to provide the influenza and pneumococcal immunizations;

(3) standing orders from a qualified health care practioner to ensure residents obtain influenza and pneumococcal immunizations;

(4) collection and recording of resident-specific immunization history information for each resident admitted to the facility;

R432-40-5. Immunization Offer and Exemptions.

(1) Each long-term health care facility shall make available to all employees an influenza immunization during the recommended vaccine season. The facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage. If the employee does not have health plan coverage for influenza immunization, then the facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department.

(2) Each long-term health care facility shall document circumstances beyond its control that prevent it from providing immunizations, such as non-availability of vaccine. If the facility is unable to obtain the necessary vaccines, it shall provide documentation and request an alternative plan from the local health department or Utah Department of Health.

(3) The following are exempt from influenza and pneumococcal immunizations:

(a) a resident, or the resident's responsible person if the resident is unable to act for himself, who has refused the immunization(s) after having been given the opportunity to be immunized and;

(b) an employee who has refused the immunization(s) after having been given the opportunity to be immunized;

(c) a resident or employee who has a condition contraindicated for immunization according to the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practice (ACIP) recommendations for influenza vaccine or for pneumococcal vaccine.

(2) For each resident and employees who is not immunized, the facility shall document in the resident's or employee's respective files the reason for not becoming immunized. The long-term care facility shall annually make influenza and pneumococcal immunizations available to all residents and employees who have claimed an exemption. The long-term care facility shall document each refusal to receive and medical contraindication to influenza and pneumococcal immunizations.

R432-40-6. Reporting of Data.

By January 31 of each year, each long-term care facility shall report to the Utah Department of Health the number of residents who have received influenza and pneumococcal immunizations from May 1 to December 31 of the prior year, even if the resident is no longer in the facility.

R432-40-7. Civil Money Penalty.

The Department may assess up to a $500 civil money penalty for failure to maintain and report annual immunization data to the Utah Department of Health, Immunization Program, by January of each year. The Department may assess up to a $100 civil money penalty per resident or employee who, for reasons under the control of the facility, does not obtain an appropriate immunization(s) or if the facility does not have documentation of a refusal or medical contraindication.

KEY: health care facilities, vaccinations
December 19, 2002 26-21
Notice of Continuation March 28, 2012

R432. Health, Family Health and Preparedness, Licensing.
R432-150. Nursing Care Facility.
R432-150-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-2. Purpose.

The purpose of R432-150 is to establish health and safety standards to provide for the physical and psycho-social well being of individuals receiving services in nursing care facilities.

R432-150-3. Construction Standard.

Nursing Care Facilities shall be constructed and maintained in accordance with R432-5, Nursing Facility Construction.

R432-150-4. Definitions.

(1) The definitions found in R432-1-3 apply to this rule.

(2) The following definitions apply to nursing care facilities.

(a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.

(b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.

(d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

(f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.

(g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.

(h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.

(i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.

(j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.

(k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health care facility or agency.

(l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(11).

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(12).

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

(p) "Dining Assistant" means an individual unrelated to a resident or patient who meets the training requirements defined in this rule to assist nursing care residents with eating and drinking.

R432-150-5. Scope of Services.

(1) An intermediate level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services.

(c) The facility may employ a licensed practical nurse to act as the health services supervisor in lieu of a director of nursing provided that a registered nurse consultant meets regularly with the health services supervisor.

(d) The facility shall provide at least the following:

(i) medical supervision;

(ii) dietary services;

(iii) social services; and

(iv) recreational therapy.

(e) The following services shall be provided as required in the resident care plan:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy;

(iv) respiratory therapy; and

(v) other therapies.

(2) A skilled level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

A licensed nurse shall serve as charge nurse on each shift.

(b) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(c) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. A person may not concurrently serve as the director of nursing and as a charge nurse.

(d) A skilled level of care facility shall provide services to residents that preserve current capabilities and prevent further deterioration including the following:

(i) medical supervision;

(ii) dietary services;

(iii) physical therapy;

(iv) social services;

(v) recreation therapy;

(vi) dental services; and

(vii) pharmacy services;

(e) The facility shall provide the following services as required by the resident care plan:

(i) respiratory therapy,

(ii) occupational therapy, and

(iii) speech therapy.

(3) Respite services may be provided in nursing care facilities.

(a) The purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or

daily rate, but shall not exceed 14-days for any single respite stay. A respite stay which exceeds 14 days is a nursing facility admission subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) a Level 1 Preadmission Screening upon the persons admission for respite services; and

(ii) a service agreement to serve as the plan of care, which shall identify the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders.

(f) The facility must have written respite care policies and procedures that are available to staff. Respite care policies and procedures must address:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees; and

(viii) handling personal funds.

(g) Persons receiving respite services must receive a copy of the Resident Rights documents upon admission.

(h) The facility must maintain a record for each person receiving respite services. The record shall contain the following:

(i) the service agreement;

(ii) resident demographic information;

(iii) nursing notes;

(iv) physician treatment orders;

(v) daily staff notes;

(vi) accident and injury reports,

(vii) a post service summary, and

(viii) an advanced directive, if available.

(i) Retention and storage of respite records shall comply with R432-150-25(3).

(j) Confidentiality and release of information shall comply with R432-150-25(4).

(4) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with R432-750. The facility shall be licensed as a hospice if it provides hospice care.

(5) A nursing care facility may provide terminal care.

R432-150-6. Adult Day Care Services.

(1) Nursing Care Facilities may offer adult day care and are not required to obtain a license from Utah Department of Human Services. If a facility provides adult day care, it shall submit policies and procedures for Department approval.

(2) In this section:

(a) "Adult Day Care" means nonresidential care and supervision for at least four but less than 24 hours per day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(b) "Consumer" means a functionally impaired adult admitted to or being evaluated for admission in a facility offering adult day care.

(3) The governing board shall designate a qualified Director to be responsible for the day-to-day program operation.

(4) The Director shall maintain written records on-site for each consumer and staff person, which shall include the following:

(a.) demographic information;

(b.) an emergency contact with name, address and telephone number;

(c.) consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) signed consumer agreement and service plan.

(e) employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The facility shall have a written eligibility, admission, and discharge policy that includes the following:

(a) intake process;

(b) notification of responsible party;

(c) reasons for admission refusal, including the Director's written, signed statement;

(d) resident rights notification; and

(e) reason for discharge or dismissal.

(6) Before a facility admits a consumer, it must first assess, in writing, the consumer's current health and medical history, immunizations, legal status, and social psychological factors to determine whether the consumer may be placed in the program.

(7) The Director or designee, the responsible party, and the consumer if competent shall develop a written, signed consumer agreement. The agreement shall include:

(a) rules of the program;

(b) services to be provided and cost of service, including refund policy; and

(c) arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) Within three days of admission to the program, the Director or designee, shall develop an individual consumer service plan that the facility shall implement for the consumer. The service plan shall include the specification of daily activities and services. The Director or designees shall reevaluate, and modify if necessary, the consumer's service plan at least every six months.

(9) The facility shall make written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. The facility shall document the actions taken, including actions taken to avoid future incident or injury, and keep the reports on file. The Director shall notify and review the incident or injury report with the responsible party no later than when the consumer is picked up at the end of the day.

(10) The facility shall post and implement a daily activity schedule.

(11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space, excluding hallways, office, storage, kitchens, and bathrooms, per consumer designated for adult day care during program operational hours.

(13) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(14) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(15) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff member shall provide continuous, direct supervision.

(b) For each eight additional consumers, or fraction thereof, the facility shall provide an additional staff member to provide continuous, direct supervision. For example, ten consumers require two staff members.

(c) If one-half or more of the consumers is diagnosed by a physician's assessment with Alzheimer's or other dementia, the ratio shall be one staff for each six consumers, or fraction thereof.

R432-150-7. Governing Body.

The facility must have a governing body, or designated persons functioning as a governing body.

(1) The governing body must establish and implement policies regarding the management and operation of the facility.

(2) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of resident rights.

(3) The governing body must appoint the administrator in writing.

R432-150-8. Administrator.

(1) The administrator must comply with the following requirements.

(a) The administrator must be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities must be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) respond to recommendations made by the quality assurance committee;

(d) implement policies and procedures governing the operation of all functions of the facility; and

(e) review all incident and accident reports and document the action taken or reason for no action.

(3) The administrator shall ensure that facility policies and procedures reflect current facility practice, and are revised and updated as needed.

(4) The administrator shall secure and update contracts for required professional services not provided directly by the facility.

(a) Contracts shall document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

(vi) a copy of the business or professional license of the contractor; and

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis.

(b) Contracts shall be signed, dated and maintained for review by the Department.

(5) The administrator shall maintain a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information. The transfer agreement must include:

(a) criteria for transfer;

(b) method of transfer;

(c) transfer of information needed for proper care and treatment of the resident transferred;

(d) security and accountability of personal property of the resident transferred;

(e) proper notification of hospital and responsible person before transfer;

(f) the facility responsible for resident care during the transfer; and

(g) resident confidentiality.

R432-150-9. Medical Director.

(1) The administrator must retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility needs.

(2) The medical director or advisory physician shall:

(a) be responsible for the development of resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review current resident care policies and procedures with the administrator;

(c) serve as a liaison between resident physicians and the administrator;

(d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees and;

(e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(c) All personnel must be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire.

(a) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-11. Quality Assurance.

(1) The administrator must implement a well-defined quality assurance plan designed to improve resident care. The plan must:

(a) include a system for the collection of data indicators;

(b) include an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implement a system to assess identified problems, concerns and opportunities for improvement; and

(d) implement actions that are designed to eliminate identified problems and improve resident care.

(2) The plan must include a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including all corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from all provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) Incident and accident reports shall:

(a) be available for Department review;

(b) be numbered and logged in a manner to account for all filed reports; and

(c) have space for written comments by the administrator or medical director.

(4) Infection reporting must be integrated into the quality assurance plan and must be reported to the Department in accordance with R386-702, Communicable Disease Rule.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance

notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds $100, the facility must deposit all money in excess of $100 in an interest-bearing account.

(f) Upon license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department. (7) Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.

R432-150-13. Resident Assessment.

(1) The facility shall upon admission obtain physician orders for the resident's immediate care.

(2) The facility must complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity.

(a) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psycho social status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy.

(b) The facility must complete the initial assessment within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission.

(c) A significant change in a resident's physical or mental condition requires an interdisciplinary team review and may require the facility to complete a new assessment within 14 calendar days of the condition change.

(d) At a minimum, the facility must complete three quarterly reviews and one full assessment in each 12 month period.

(e) The facility shall use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(4) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psycho-social needs as identified in the comprehensive assessment.

(a) The comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(b) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(5) The facility must prepare at the time of discharge a final summary of the resident's status to include items in R432-150-13(2)(a). The final summary shall be available for release to authorized persons and agencies, with the consent of the resident or representative.

(a) The final summary must include a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(b) If the discharge of the resident is based on the inability of the facility to meet the resident's needs, the final summary must contain a detailed explanation of why the resident's needs could not be met.

R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2) The facility must have written policies and procedures regarding the proper use of restraints.

(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.

(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.

(d) If use of a physical or a chemical restraint is implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.

(4) Physical and chemical restraint policies must incorporate and address at least the following:

(a) resident assessment criteria which includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives prior to the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Emergency use of physical and chemical restraints must comply with the following:

(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.

(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.

(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.

(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.

(6) Physical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care.

(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.

(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.

(d) Staff application of physical restraints must not cause

injury or allow a potential for injury.

(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.

(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.

(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.

(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-150-15. Quality of Care.

(1) The facility must provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psycho-social well-being, in accordance with the comprehensive assessment and care plan.

(a) Necessary care and services include the resident's ability to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) use the toilet;

(iv) eat; and

(v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility must ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve his abilities; and

(iii) a resident who is unable to carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The facility must assist residents in scheduling appointments and arranging transportation for vision and hearing care as needed.

(3) The facility's comprehensive assessment of a resident must include an assessment of pressure sores. The facility must ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The facility's comprehensive assessment of the resident must include an assessment of incontinence. The facility must ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse must complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The facility must assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The facility must ensure that the psycho-social function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psycho-social function was unavoidable. The facility shall ensure that:

(a) a resident who displays psycho-social adjustment difficulty receives treatment and services to achieve as much re-motivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psycho-social adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The facility must assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The facility must maintain the resident environment to be as free of accident hazards as is possible.

(9) The facility must provide each resident with adequate supervision and assistive devices to prevent accidents.

(10) Each resident's comprehensive assessment must include an assessment on nutritional status. The facility must ensure that each resident:

(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The facility must ensure that residents receive proper treatment and care for the following special services:

(a) injections;

(b) parenteral and enteral fluids;

(c) colostomy, ureterostomy, or ileostomy care;

(d) tracheostomy care;

(e) tracheal suctioning;

(f) respiratory care;

(g) foot care; and

(h) prostheses care.

(13) Each resident's drug regimen must be free from unnecessary drugs and the facility shall ensure that:

(a) residents who have not used anti-psychotic drugs are not given these drugs unless anti-psychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(b) residents who use anti-psychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically

contraindicated in an effort to discontinue these drugs.

(14) The quality assurance committee must monitor medication errors to ensure that:

(a) the facility does not have medication error rates of five percent or greater;

(b) residents are free of any significant medication errors.

R432-150-16. Physician Services.

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

(c) Physician visits must be completed within ten days of the date the visit is required.

(d) Except as required by R432-150-16(4)(f), all required physician visits must be made by the physician.

(e) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-17. Social Services.

Each nursing care facility must provide or arrange for medical social services sufficient to meet the needs of the residents. Social services must be under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

R432-150-18. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the facility.

(2) Laboratory services must comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-150-19. Pharmacy Services.

(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.

(2) The facility must employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.

(b) The physician and the director of Nursing or health services supervisor must indicate acceptance or rejection of the report and document any action taken.

(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (6)(e), and permit only authorized personnel to have access to the keys.

(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Non-medication materials that are poisonous or caustic may not be stored with medications.

(c) Containers must be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(6) The facility must maintain an emergency drug supply.

(a) Emergency drug containers shall be sealed to prevent unauthorized use.

(b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.

(c) The emergency drug supply shall be stored and located for access by the nursing staff.

(d) The pharmacist must inventory the emergency drug supply monthly.

(e) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.

(8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that:

(a) such drugs are released in compliance R156-17a-619; and

(b) a record of the drugs sent with the resident is documented in the resident's health record.

(11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-20. Recreation Therapy.

(1) The facility shall provide for an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psycho-social well-being of each resident in accordance with the comprehensive assessment.

(a) Recreation therapy shall be provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(b) The recreation therapy staff must:

(i) develop monthly activity calendars for residents activities; and

(ii) post the calendar in a prominent location to be available to residents, staff, and visitors.

(2) Each facility must provide sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

(3) Storage must be provided for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-150-21. Pet Policy.

(1) Each facility must develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee must determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

R432-150-22. Admission, Transfer, and Discharge.

(1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:

(a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);

(b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and(d).

(3) Prior to the transfer or discharge of a resident, the facility must:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-22(5).

(4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22(2), must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) Notice may be made as soon as practicable before transfer or discharge if:

(a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(c) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) a resident has not resided in the facility for 30 days.

(6) The contents of the written transfer or discharge notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.

(a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:

(i) the facility's policies regarding bed-hold periods permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology

services, these facility must comply with R432-100-21, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and emergency dental care for residents.

(a) Dental care provisions shall include:

(b) development of oral hygiene policies and procedures with input from dentists;

(c) presentation of oral hygiene in-service programs by knowledgeable persons;

(d) development of referral service for those residents who do not have a personal dentist; and

(e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document at least monthly consulation by a certified dietitian according to the needs of the residents.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

(i) prepared in advance;

(ii) followed;

(iii) different each day;

(iv) posted for each day of the week;

(v) approved and signed by a certified dietician and;

(vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) The attending physician must prescribe in writing all therapeutic diets.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

(10) A nursing care facility may use trained dining assistants to aid residents in eating and drinking if:

(a) a licensed practical nurse-geriatric care manager, registered nurse , advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the resident does not have complicated feeding problems, such as recurrent lung aspirations, behaviors which interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) The service plan or plan of care documents that the resident needs assistance with eating and drinking and defines who is qualified to offer the assistance.

(11) If the nursing care facility uses a dining assistant, the facility must assure that the dining assistant:

(a) has completed a training course from a Department-approved training program;

(b) has completed a background screening pursuant to R432-35; and

(c) performs duties only for those residents who do not have complicated feeding problems.

(12) A long-term care facility, employee organization, person, governmental entity, or private organization must submit the following to the Department to become Department-approved training program:

(a) a copy of the curriculum to be implemented that meets the requirements of subsection (13); and

(b) the names and credentials of the trainers.

(13) The training course for the dining assistant shall provide eight hours of instruction and one hour of observation by the trainer to ensure competency. The course shall include the following topics:

(a) feeding techniques;

(b) assistance with eating and drinking;

(c) communication and interpersonal skills;

(d) safety and emergency procedures including the Heimlich manuever;

(e) infection control;

(f) resident rights;

(g) recognizing resident changes inconsistent with their normal behavior and the importance in reporting those changes to the supervisory nurse;

(h) special diets;

(i) documentation of type and amount of food and hydration intake;

(j) appropriate response to resident behaviors, and

(k) use of adaptive equipment.

(14) The training program shall issue a certificate of completion and maintain a list of the dining assistants. The certifcate shall include the training program provider and provider's telephone number at which a long-term care facility may verify the training, and the dining assistant's name and address.

(15) To provide dining assistant training in a Department-approved program, a trainer must hold a current valid license to practice as:

(a) a registered nurse, advanced practice registered nurse or licensed practical nurse-geriatric care manager pursuant to Title 58, Chapter 31b;

(b) a registered dietitian, pursuant to Title 58, Chapter 49 ;

(c) a speech-language pathologist, pursuant to Title 58, Chapter 41; or

(d) an occupational therapist, pursuant to Title 58, Chapter 42a.

(16) The Department may suspend a training program if the program's courses do not meet the requirements of this rule.

(17) The Department may suspend a training program operated by a nursing care facility if:

(a) a federal or state survey reveals failure to comply with federal regulations or state rules regarding feeding or dining assistant programs;

(b) the facility fails to provide sufficient, competent staff to respond to emergencies;

(c) the Department sanctions the facility for any reason; or

(d) the Department determines that the facility is in continuous or chronic non-compliance under state rule or that the facility has provided sub-standard quality of care under federal regulation.

R432-150-25. Medical Records.

(1) The facility must implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2) The administrator must designate an employee to be responsible and accountable for the processing of medical records.

(a) The medical records department must be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility must consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(3) The resident medical record and its contents must be retained, stored and safeguarded from loss, defacement, tampering, and damage from fires and floods.

(a) Medical records must be protected against access by unauthorized individuals.

(b) Medical records must be retained for at least seven years. Medical records of minors must be kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The facility must maintain an individual medical record for each resident. The medical record must contain written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(e) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(l) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders; and

(q) information pertaining to incidents, accidents and injuries.

(r) If a resident has an advanced directive, the resident's record must contain a copy of the advanced directive.

(5) All entries into the medical record must be authenticated including date, name or identifier initials, and title of the person making the entries

(6) Resident respite records must be maintained within the facility.

R432-150-26. Housekeeping Services.

(1) The facility must provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(a) Cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials must be stored in a locked area to prevent unauthorized access.

(b) The facility must provide adequate housekeeping services and sufficient personnel to maintain a clean and sanitary environment.

(i) Personnel engaged in housekeeping or laundry services cannot be engaged concurrently in food service or resident care.

(ii) If housekeeping personnel also work in food services or direct patient care services, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment.

R432-150-27. Laundry Services.

(1) The administrator must designate a person to direct the facility's laundry service. The designee must have experience, training , or knowledge of the following:

(a) proper use of chemicals in the laundry;

(b) proper laundry procedures;

(c) proper use of laundry equipment;

(d) facility policies and procedures; and

(e) federal, state and local rules and regulations.

(2) The facility must provide clean linens, towels and wash cloths for resident use.

(3) If the facility contracts for laundry services, there must be a signed, dated agreement that details all services provided.

(4) The facility must inform the resident and family of facility laundry policy for personal clothing.

(5) The facility must ensure that each resident's personal laundry is marked for identification.

(6) There must be enough clean linen, towels and washcloths for at least three complete changes of the facility's licensed bed capacity.

(7) There must be a bed spread for each resident bed.

(8) Clean linen must be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(9) Soiled linen must be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(10) Soiled linen must be sorted in a separate room by methods affording protection from contamination.

(11) The laundry area must be separate from any room where food is stored, prepared, or served.

R432-150-28. Maintenance Services.

(1) The facility must ensure that buildings, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(a) The administrator shall employ a person qualified by

experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there must be a signed, dated agreement that details all services provided. The maintenance service must meet all requirements of this section.

(c) The facility must develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) The facility must ensure that the premises is free from vermin and rodents.

(3) Entrances, exits, steps, ramps, and outside walkways must be maintained in a safe condition with regard to snow, ice and other hazards.

(4) Facilities which provide care for residents who cannot be relocated in an emergency must make provision for emergency lighting and heat to meet the needs of residents.

(5) Functional flashlights shall be available for emergency use by staff.

(6) All facility equipment must be tested, calibrated and maintained in accordance with manufacturer specifications.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Documentation of testing or calibration conducted by an outside agency must be available for Department review.

(7) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(8) Heating, air conditioning, and ventilating systems must be maintained to provide comfortable temperatures.

(9) Back-flow prevention devices must be maintained in operating condition and tested according to manufacturer specifications.

(10) Hot water temperature controls must automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. Hot water must be delivered to public and resident care areas at temperatures between 105-115 degrees F.

(11) Disposable and single use items must be properly disposed of after use.

(12) Nursing equipment and supplies must be available as determined by facility policy in accordance with the needs of the residents.

(13) The facility must have at least one first aid kit and a first aid manual available at a specified location in the facility. The first aid manual must be a current edition of a basic first aid manual approved by the American Red Cross or the American Medical Association.

(14) The facility must have at least one OSHA-approved spill or clean-up kit for blood-borne pathogens.

(15) Vehicles used to transport residents must be:

(a) licensed with a current vehicle registration and safety inspection;

(b) equipped with individual, size-appropriate safety restraints such as seat belts which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, and are installed and used in accordance with manufacturer specifications;

(c) equipped with a first aid kit as specified in R432-150-28(13); and

(d) equipped with a spill or clean-up kit as specified in R432-150-28(14).

R432-150-29. Emergency Response and Preparedness Plan.

(1) The facility must ensure the safety and well-being of residents and make provisions for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The facility must develop an emergency and disaster plan that is approved by the governing board.

(a) The facility's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) individuals who shall be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(b) The facility must have available at each nursing station emergency telephone numbers including responsible staff persons in the order of priority.

(c) The facility must document resident emergencies and responses, emergency events and responses, and the location of residents and staff evacuated from the facility during an emergency.

(d) The facility must conduct and document simulated disaster drills semi-annually.

(3) The administrator must develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan must delineate evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department.

(b) The facility must post the evacuation plan in prominent locations in exit access ways throughout the building.

(c) The written fire or emergency plan must include fire containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills and fire drill documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Family Health and Preparedness, Licensing.
R432-151. Mental Disease Facility.
R432-151-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-151-2. Purpose.

The purpose of the rule is to establish program standards for a mental disease facility (MDF) that is engaged primarily in providing diagnosis, treatment or care of persons with mental disease, including medical attention, nursing care and related services.

R432-151-3. General Provisions.

(1) R432-150 also applies to a Mental Disease Facility.

(2) The Department shall consider the following to determine whether a facility is an MDF:

(a) The facility specializes in providing psychiatric care and treatment, with emphasis on active treatment programs which focus on mental disease.

(b) Fifty per cent or more of the residents in the facility have a diagnosis of mental disease (using the ICD-9-CM codes) excluding the following:

(i) 290 through 294.9 and 310 through 310.9 for senility or organic brain syndrome;

(ii) 317 through 319 for mental retardation;

(iii) 314 through 315.9 for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons; and

(iv) 309 and 316 for Adjustment Reaction or Psychic factors associated with disease classified elsewhere.

(3) A facility that is determined to be an MDF according to this rule must be licensed as a mental disease facility.

(4) When a facility census identifies 40 per cent or more of the resident population with a mental disease diagnosis, the Department may request the facility to submit a completed Utah Level of Care Survey (ULOCS).

R432-151-4. Definitions.

(1) See common definitions in rule R432-1-3.

(2) Special definitions.

(a) "Utah Level of Care Scale" means the results of an empirical, validated assessment of resident level of function using the Utah Level of Care Survey instrument.

(b) "Utah Level of Care Survey" means a survey which includes a set of behavioral observations that provide a cross-sectional profile of resident functional deficits and care needs. The scale defines six service pattern types which reflect simultaneous consideration of physical and psychosocial care needs.

R432-151-5. Treatment Programs.

The facility shall develop and maintain standards through written policies and procedures for staff participation and for resident services.

(1) Goals, objectives, and available programs for treatment of mental disease shall be developed in such a manner that performance and effectiveness can be measured.

(2) These standards shall comply with the rules and shall encourage both quality of care and quality of life.

R432-151-6. Program Standards.

(1) Each resident shall receive individualized treatment, which includes at least the following:

(a) Provision of treatment services, regardless of the source(s) of financial support;

(b) Provision of services in the least restrictive environment possible;

(c) Provision of an individualized resident care plan which has regular periodic review;

(d) Invitation for active participation by residents and their responsible parent, relative, friend, or guardian in the development of resident care plans;

(e) Competent, qualified, and experienced professional staff to implement and supervise the resident care plan.

(2) The facility shall develop policies to assure that services are provided with sufficient resources (such as program funds, staff, equipment, supplies, and space) to meet resident needs.

(3) The facility shall maintain programs, beds, and services that are available 24 hours a day, seven days a week.

(4) Written policies and procedures shall define what action is to be taken when maladaptive behavior exceeds criteria for program participation.

(5) Services not directly provided within the facility must have written agreements or arrangements to obtain such services whenever they are authorized or prescribed. Such services may include special assessments or therapeutic treatment programs.

(6) The facility shall establish written policies and procedures which include:

(a) Admission criteria which describe selection of the population served, including age groups and other relevant characteristics;

(b) The intake process;

(c) Criteria for resident participation in programs;

(d) Specific treatment modalities;

(i) Identify services provided in the modality; and

(ii) Identify goals and objectives of the modality;

(e) Crisis intervention and emergency services;

(f) Use of involuntary medication or physical restraints;

(g) Restrictive procedures;

(h) Methods to collect, process, report, and disseminate resident assessment data;

(i) Case coordination and case management;

(j) Development and periodic review of plans of treatment;

(k) Discharge planning;

(l) Staff in-service needs;

(m) Responsibility for medical and dental care;

(n) Provisions for family participation in the treatment program;

(o) Arrangements for clothing, allowances, and gifts;

(p) Provisions to allow resident departure from the facility as part of activities offered in the program;

(q) When the resident leaves the facility against medical advice.

(7) The facility shall develop job descriptions to delineate the roles and responsibilities of team members and to establish supervisory and organizational relationships.

(8) The professional staff shall determine qualifications required to assume specific responsibilities. Individual personnel files shall contain documentation to verify whether health care staff meet state and local requirements for certificates, licenses, or registrations.

(9) There shall be a written and dated consent form signed by the resident or the resident's legal guardian for the use of, participation in, or performance of the following:

(a) Surgical procedures;

(b) Procedures that place the resident at risk;

(c) Transfer;

(d) Other procedures where consent is required by law.

(10) The resident shall be allowed visitors, regardless of age, unless such visits are clinically contraindicated, and if so, the reasons must be documented by the professionals who made this decision.

(11) Areas shall be provided for residents to visit in private, unless such privacy is contraindicated and documented in the resident's record and plan of treatment.

R432-151-7. Environment.

(1) Each facility shall establish an environment to enhance a positive self-image of residents and preserve individual dignity.

(a) Programs which assume responsibility for security and yet maintain an open-door policy are encouraged.

(b) Treatment programs shall be conducted without disruption of, or disturbance to, other facility programs.

(2) The facility shall be designed, constructed, equipped, and operated to promote efficient and effective conduct of treatment programs and to protect health and safety both for the residents served and for the staff.

(3) The facility shall meet environmental needs of the residents.

(4) The facility shall provide adequate space for the program to carry out its goals.

(a) When resident needs or program goals include outdoor activity, areas and facilities shall be provided.

(i) Natural terrain and community resources may provide options for outdoor activities.

(ii) Other areas appropriate to resident activities may include an auditorium, stage, swimming pool, canteen, etc. (iii) Activities may take place within the community setting in affiliation with churches, schools, organizations, etc.

(b) Content of program plans shall describe circumstances for use of available resources, and when necessary, have written affiliation agreements.

(c) Recreational equipment must be maintained in working order.

(5) Design, location, and furnishings of program areas shall accommodate residents and visitors. The need for privacy or support from staff as well as goals of the facility programs shall be taken into consideration.

(6) Clocks and calendars shall be provided to promote awareness of time and season.

(7) Books, current magazines, and daily newspapers shall be available to the residents.

(8) Areas shall be available for a range of social activities from two-person conversations to group activities. Areas shall also be available where a resident can be alone when this is not in conflict with the individual's treatment program.

(9) Noise-producing equipment and appliances shall not interfere with other activities or the therapeutic program. Written policies and procedures shall address the use and location of this equipment such as radios, televisions, record players, musical instruments, tape players, etc.

(10) Space and general equipment shall be provided for table games and pursuit of individual hobbies.

(a) Equipment and games shall be accessible to residents.

(b) Hobby supplies, as well as arts and crafts materials used in therapeutic activity, shall be available according to residents' cultural or educational backgrounds and needs under the management of Activity Services.

(11) Dining areas shall be pleasant and promote a congenial, relaxed atmosphere.

(a) Dining rooms shall be supervised during meals by staff personnel to provide assistance and to ensure that each resident receives adequate amounts and varieties of foods.

(b) Food shall be served in an attractive and appetizing manner, as planned in menus, and at realistic mealtimes.

(c) Menus shall provide color and variety in meeting nutritional needs.

(d) Provisions shall be made in the menus and dining areas to cover special occasions, holidays, and weekends.

(e) The facility shall make available an area which allows resident access for preparation and serving of food, beverages, or snacks. Facility policy shall establish guidelines for resident use, such as leisure time activity, or, to offer rehabilitation or habilitation in a therapeutic environment.

(f) Bedrooms shall be assigned on the basis of the resident's need for group support, privacy, or independence.

(i) Rooms shall have doors for privacy, and an appropriate bed with mattress, pillow, fresh linens, and blankets furnished by the facility.

(ii) There shall be closet or storage space for personal items and clothing which the resident has and shall be allowed to use or wear.

(iii) The selection of residents assigned to a room shall be appropriate to the ages, development, and needs of the resident and to the goals of the program.

(iv) When rooms are shared, individual privacy must be provided by curtains, by partitions or by furniture arrangement.

(v) Provision shall be made for residents who need extra sleep, who have sleep disturbances, or who need greater privacy.

(g) Residents shall be encouraged to maintain their sleeping and living areas and perform other day-to-day housekeeping activities to support non-impaired functioning, or to learn rehabilitation or habilitation responsibilities. Staff assistance and equipment shall be provided as needed.

(h) Residents shall be allowed to keep and display personal belongings and to add personal decorations to their rooms. The facility shall have written policies to govern use of decorative displays.

(i) Grooming and personal hygiene articles shall be readily accessible and shall be appropriate to the age, behavior, and clinical status of the resident.

(i) If access to potentially dangerous grooming aids or other personal items is contraindicated, a resident's personal articles may be kept under lock and key by the staff.

(ii) The professional staff must explain to the resident the conditions under which the articles may be used.

(iii) The treatment plan must also incorporate such restrictions and use.

(j) Good standards for grooming and personal hygiene including bathing, oral hygiene, care of hair and nails, and toilet habits shall be taught or maintained. Individual resident goals shall be written in the plans of treatment.

(k) Clothing shall be appropriate.

(i) Clothing shall be in good repair, of proper size, suited to the climate, and similar to clothing worn in the community.

(ii) Training and assistance in the selection and proper care of clothing shall be available as needed.

(iii) Training goals must be incorporated into the resident care plan.

(iv) An adequate amount of clothing shall be available to permit laundering, cleaning, and repair.

(l) Toilet and bathing facilities shall afford privacy with doors, toilet seats, partitions, and shower curtains.

(m) There shall be opportunity to participate in social events with persons of the opposite sex under adequate supervision.

(n) The resident shall retain possession of personal items such as tobacco products, cosmetics, watches, appliances, and money, except where possession may be restricted in the resident care plan.

(o) The resident shall have access to a personal funds account maintained by the business office or as specified by facility policy. Personal resource funds which a resident may have should be kept in this account.

R432-151-8. Construction and Physical Environment.

Refer to R432-5, Nursing Facility Construction.

R432-151-9. Administration and Organization.

(1) Program Director.

(a) The program director shall be a qualified health professional with a minimum of one year's experience in an established program for treatment of mental disease.

(b) The program director shall have a degree in administration, psychology, social work, nursing, or medicine and be licensed, certified or registered by the Utah Department of Commerce.

(c) The program director shall be appointed in writing by the governing body, and shall be accountable for the overall function of the program.

(d) The program director shall be accountable, whether by performance or by delegation, for the following functions:

(i) Develop written short-term and long-term goals for the treatment program;

(ii) Develop written policy and procedures, review them at least annually, and revise as necessary. Dates of review shall be documented;

(iii) Utilize quality assurance methods to assess efficiency and effectiveness of the program;

(iv) Supervise the development and implementation of each resident's individualized resident care plan;

(v) Supervise appropriate delivery of program modalities and services;

(vi) Integrate various aspects of the treatment program;

(vii) Maintain thorough clinical records for each resident;

(viii) Establish periodic reviews of each resident care plan;

(ix) Provide orientation for each new employee to acquaint them with the philosophy, organization, practices, and goals of the treatment program;

(x) Provide in-service training for any employee who has not achieved the desired level of competence;

(xi) Promote continuing education opportunities for all employees to update and improve their skills.

(2) Professional Staff.

(a) The facility shall have administrative, qualified health care professional, and support staff available to assess and address resident needs within its scope of services.

(b) Qualified professional staff includes psychiatrists, physicians, clinical psychologists, social workers, licensed nurses, and other health care professionals in sufficient number to provide services offered by the facility.

(c) When qualified professional staff members other than nursing staff are not available on a full-time basis, they shall be available on a part-time basis or by contract agreement to fulfill the requirements and needs of the treatment programs offered.

(d) The professional staff shall determine what qualifications are required to assume specific responsibilities.

(i) All members of the treatment team who have been assigned specific responsibilities shall be qualified for that position by training and experience.

(ii) Services shall be supervised by qualified, licensed personnel.

(e) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(i) The facility shall maintain documentation and copies of the license, certification, or registration for Department review.

(ii) Failure to ensure that employees are current for licensure, certification or registration may result in sanctions to the facility license.

(f) The facility shall have a Health Surveillance policy which conforms with R432-150-10(4).

(3) Orientation.

(a) These rules shall apply in addition to R432-150-10(5).

(b) All new employees shall be oriented to job requirements, personnel policies, and job training beginning the first day of employment.

(c) Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first three months of employment.

(d) New employees shall receive orientation to the following:

(i) Administration, organization, policies and procedures, job training, responsibilities, and philosophy of the treatment program;

(ii) Resident rights;

(iii) Safety and security procedures for fire, disaster, and AWOL;

(iv) Symptoms of residents with maladaptive behaviors;

(v) Training how to respond appropriately to residents' sexual behavior;

(vi) Suicide precautions;

(vii) Procedures for first aid and medical emergencies;

(viii) Medical recording or charting; medication sheets if pertinent to the job assignment;

(ix) Reporting abuse, neglect and exploitation; and

(x) Quality assurance objectives.

(e) Registered nurses and licensed practical nurses will receive additional orientation to the following:

(i) Concepts of treatment for residents with mental disease;

(ii) Roles and functions of nurses in treatment programs for residents with mental disease;

(iii) Nursing policy and procedure manuals;

(iv) Psychotropic medications.

(4) Staff growth and development.

(a) These rules shall apply addition to R432-150-10(6).

(b) In-service sessions shall be planned in advance and shall be held at least quarterly.

(c) In-service education shall be available to all employees.

(i) Aides shall receive at least the following training:

(A) Basic health - to learn nursing skills in non-complicated nursing situations;

(B) Basic first aid;

(C) Communications;

(D) Introduction to human services;

(E) Understanding behavior - the resident's and the staff's; appropriate and inappropriate behaviors; responsibility to report undesirable behaviors to supervisors.

(ii) Licensed professional staff shall receive continuing education to keep informed of significant new developments and skills.

(iii) The facility should make use of opportunities outside the facility, such as workshops, institutes, seminars, and formal classes to supplement the facility's program of continuing education.

R432-151-10. Resident Evaluation.

(1) Evaluation - Recognition of mental health needs and intervention/treatment for residents should be considered, documented, and implemented.

(2) At least two of the following criteria, which can be verified through medical record documentation, shall be used to identify whether there is a need for evaluation of mental disease:

(a) When there are marked changes in the person's behavior;

(b) When behavioral and socially functional strengths become weaknesses, and to what extent this has occurred;

(c) When the mood of a resident is prolonged, exaggerated, and not in keeping with the circumstances of the attending situation and environment;

(d) When these abnormal exaggerated states extend over unusually long periods of time, whether lasting for days, weeks, or months; criteria for abnormal behavior involves depth, duration, and situations;

(e) When observations of behavior take into account the resident's postures, gestures, tone of voice, walk, ideas expressed, intellectual symptoms, emotions/emotional responses, and degree of motor activity;

(f) When there are special supervisory precautions recommended for the health and safety of the resident

(situations such as suicidal; runaway; careless smoker; history of non-compliance with medication).

(3) Service patterns shall be determined using the Utah Level of Care Survey. The outcome may affect whether the facility should be considered an MDF.

R432-151-11. Admission.

(1) This section shall apply in addition to R432-150-13.

(2) Admission shall be determined by treatment program criteria and the needs of the residents.

(a) Admission criteria shall be clearly stated in writing in facility policies.

(b) Acceptance of a resident for treatment shall be based on the following:

(i) The resident requires treatment appropriate to the environmental restrictions and level of care provided by the facility;

(ii) The treatment required is appropriately provided within the program;

(iii) Alternative placement for less intensive care or less restrictive environment is not available.

(c) Admitting personnel will inform applicants during the intake process about the following:

(i) Services that are available;

(ii) Activities and goals of the treatment program;

(iii) Information shall be obtained during the intake process to facilitate development of a preliminary resident care plan.

R432-151-12. Resident Rights.

(1) These rules shall apply in addition to R432-150-12 and shall provide emphasis to resident rights.

(2) The facility shall support and protect the resident's basic rights as follows:

(a) being allowed to take responsibility for oneself;

(b) to be free to exercise judgement;

(c) to exist as an individual;

(d) to preserve unimpaired functions.

(3) These rights shall include the following:

(a) The resident has the right to receive treatment that does not create irreversible conditions.

(b) Residents shall be allowed to conduct private telephone conversations with family and friends.

(i) When therapeutic indications necessitate restrictions on visitors, telephone calls, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by responsible staff at least every seven days.

(ii) Evaluations and determinations will be documented.

(iii) When limitations on visitors, telephone calls, or other communications are indicated for practical reasons due to expense of travel or long distance telephone calls such limitations shall be determined with participation of the resident and other persons involved.

(c) Each resident shall have the right to request the opinion of a consultant at his or her expense, or to request an in-house review of the individual treatment plan.

(d) Each resident shall be informed of his or her rights in a language and vocabulary the resident should understand.

(e) The resident shall have the right to be fully informed about the following:

(i) Rights and responsibilities of residents, including rules governing resident conduct and types of infractions that can result in restrictions or discharge.

(ii) Staff members who are responsible for resident care, their professional status, their staff relationship, and reasons for changes in staff;

(iii) Type of care, procedures, and treatment the resident will receive;

(iv) Use and disposition of special observation and audiovisual techniques;

(v) Risks, side effects, and benefits of medications and treatment procedures used;

(vi) Alternate treatment procedures that are available;

(vii) The right to refuse specific medications or treatment procedures and medical consequences as a result of such refusal;

(viii) Costs to be borne by the resident or family, and itemized cost, whenever possible, of services or treatment rendered;

(ix) Sources of reimbursement and any limitations placed on duration of services.

(f) The resident shall be informed immediately whenever a right is taken away and why. The circumstances to regain the right shall also be explained.

(g) Residents shall have the right to free exercise of religious beliefs and to participate in religious worship services. No individual will be coerced or forced into engaging in any religious activity.

R432-151-13. Resident Care Plans.

(1) These rules shall apply in addition to R432-150-13 and shall provide emphasis regarding resident care plans.

(2) The written resident care plan shall be based on a complete assessment of each resident, and should include the resident's physical, emotional, behavioral, social, recreational, legal, vocational, and nutritional needs.

(a) The facility staff shall obtain, review, and update assessment data.

(b) When information has been obtained by other facilities or agencies prior to the resident's admission, reports should be obtained which cover the required assessments.

(3) The preliminary resident care plan shall be completed within seven days of admission.

(a) Plans must be reviewed on a monthly basis for the first three months; thereafter at intervals determined by the interdisciplinary team but not to exceed every other month at approximately 60-day intervals.

(b) When a resident is discharged and readmitted, a new resident care plan must be developed.

(4) A physician or nurse practitioner shall assess each resident's physical health within five days prior to or within 48 hours after admission.

(a) A history and physical exam shall be done which includes appropriate laboratory work-up;

(b) a determination of the type and extent of special examinations, tests, or evaluations needed; and

(c) when indicated, a thorough neurological exam.

(5) A written comprehensive health assessment, compiled by professional staff members, shall include the following:

(a) Alcohol and drug history including the following:

(i) drugs used in the past;

(ii) drugs used recently, especially within the preceding 48 hours;

(iii) drugs of preference;

(iv) frequency with which each drug is used;

(v) route of administration of each drug;

(vi) drugs used in combination;

(vii) dosages used;

(viii) year of first use of each drug;

(ix) previous occurrences of overdose, withdrawal, or adverse drug reactions;

(x) history of previous treatment received for alcohol or drug abuse;

(b) Degree of physical disability and indicated remedial or restorative measures including:

(i) nutrition,

(ii) nursing,

(iii) physical medicine, and

(iv) pharmacologic intervention;

(c) Degree of psychological impairment and appropriate measures to be taken to relieve treatable distress or to compensate for non-reversible impairments;

(d) Capacity for social interaction and what appropriate rehabilitation or habilitation measures are to be undertaken, including group living experiences and other activities to maintain or increase the individual's capacity to independently manage daily living.

(e) A written emotional or behavioral assessment of each resident shall be entered in the resident's record. The assessment shall include the following:

(i) A history of previous emotional or behavioral problems and treatment;

(ii) The resident's current level of emotional and behavioral functioning;

(iii) A psychiatrist's evaluation within 30 days prior to or within one week after admission;

(iv) When indicated, a mental status assessment appropriate to the age of the resident;

(v) When indicated, psychological assessments which include intellectual and personality testing;

(vi) Other functional assessments such as language, self-care ability, and visual-motor coordination.

(f) A written social assessment of each resident shall include information about the following:

(i) Home environment;

(ii) Childhood history;

(iii) The resident's family circumstances; the current living situation; social, ethnic, and cultural background; sexual abuse;

(iv) Resident and family strengths and weaknesses;

(v) Military service history if applicable;

(vi) Financial resources;

(vii) Religion;

(g) A written activities assessment of each resident shall include information about current skills, talents, aptitudes, interests, and attitudes.

(h) A nutritional needs assessment shall be conducted and documented.

(i) When appropriate, a written vocational assessment of the resident shall include:

(i) Previous occupations including brief descriptions of the type of work, duration of employment, reasons for leaving, etc.;

(ii) Education history, including academic or vocational training;

(iii) Past experiences and attitudes toward work, present motivations, areas of interest, and possibilities for future education, training, or employment.

(j) When appropriate, a written assessment of the resident's legal status shall include:

(i) A history with information about competency, court commitment, prior criminal convictions, any pending legal actions;

(ii) The urgency of the legal situation;

(iii) How the individual's legal situation may influence treatment.

(k) The facility shall develop procedures which describe early intervention for symptoms that are life-threatening, are indicative of disorganization or deterioration, or may seriously affect the treatment process.

(l) The resident care plan shall comply with R432-150-13(4) and include the following:

(i) Treatment goals expressed as standards of achievement;

(ii) Services or treatment to be provided (based on assessments), at what intervals, and by whom;

(iii) Nutritional requirements;

(iv) Security precautions;

(v) Precautions and interventions for maladaptive behaviors;

(vi) Restrictions or loss of privileges, if any; factors to regain privileges;

(vii) Date the plan was initiated and dates of subsequent reviews;

(viii) Discharge planning.

R432-151-14. Active Treatment.

(1) Active treatment programs shall provide services reasonably expected to improve the resident's condition.

(2) Active Treatment services shall be offered in an environment that encompasses as many physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components as necessary to achieve this purpose.

(3) Active treatment shall fulfill these objectives:

(a) To modify or minimize symptoms and conditions contributing to the need for treatment;

(b) To promote humane conditions, such as abilities to relate constructively, to care, and to fulfill human needs (affection, recognition, self-esteem, self-realization) within individual capabilities.

(c) If the planned or prescribed activities are primarily diversional in nature and thus provide only some social or recreational outlet for the resident, they shall not be regarded as active treatment to improve the resident's condition.

(d) Administration of a drug or drugs expected to significantly alleviate a resident's symptoms shall not of itself constitute active treatment.

(e) An active treatment program shall include the following components:

(i) Supervision by a physician.

(ii) An interdisciplinary professional evaluation.

(A) that is completed preferably before admission to the facility and definitely before the facility requests payment;

(B) that consists of complete medical diagnosis, social and psychological evaluations, and evaluation of the individual's need for psychiatric care;

(C) that is made by a psychiatrist (physician), a social worker, and other professionals, at least one of whom is qualified by at least one year of experience in treatment of residents with mental disease.

(iii) Periodic reevaluation (preferably on a quarterly basis, but not to exceed six month intervals) medically, socially, and psychologically by the staff involved in carrying out the resident's individual plan of care. This reevaluation must include review of the individual's progress toward meeting the plan objectives, appropriateness of the plan of care, assessment of continuing need for institutional care, and consideration of alternative methods or placement for care.

(iv) An individualized written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences, or therapies necessary for the individual to reach those goals or objectives.

(v) A post-institutional plan, as part of the individual plan of care, developed by the interdisciplinary team prior to discharge. This plan must include considerations for follow-up services, protective supervision if necessary, and other services available as needed in the resident's new environment.

(vi) The resident's regular participation in professionally developed and supervised activities, experiences, or therapies in accordance with the resident's individualized plan of care.

R432-151-15. Special Treatment Procedures.

(1) The facility shall identify special treatment procedures that require justification for use, and shall develop standards governing the use of these procedures consistent with resident rights and facility policy.

(2) Standards must include:

(a) Use of seclusion and time out;

(b) Prescription and administration of drugs;

(c) Use of involuntary medication;
(d) Use of procedures that involve physical risk for the resident;
(e) Use of procedures to treat maladaptive behaviors other than use of painful stimuli.
(3) Use of painful stimuli is not allowed.
(4) Indications for use of special treatment procedures shall be documented in the resident's record.

R432-151-16. Security.
(1) The facility shall follow its established written procedure in the event of resident AWOL or elopement so that the resident is returned to the facility in as short a time as possible.
(2) In all cases of AWOL, the program director, family or significant others, and appropriate agencies outside the facility (police, highway patrol, etc.) shall be notified according to written facility policy and procedure.
(3) There shall be documentation and review of all aspects of the AWOL.
(a) Notation of the AWOL must be in the resident record with more detail in an incident report kept by the administrator.
(b) These reports shall be made available for Department review upon request.
(4) Facility policy shall define the staff's escort responsibility, conduct, and liability.

R432-151-17. Industrial Therapy.
(1) Job placement may be an element of resident treatment and may be offered to provide therapeutic benefit on an individual basis.
(2) The goal of the industrial program shall include development of the resident's skills to deal with situations and problems which happen on the job, to accept responsibility, and to perform under direction of supervisors.
(3) No resident shall work as a substitute for staff.
(4) The job placement shall comply with local, state, and federal laws and regulations.
(5) Compensation.
(a) Residents who have a job shall receive pay commensurate with the economic value of the work.
(b) The resident shall receive appropriate compensation for labor performed away from the facility.
(c) Residents may be encouraged to perform personal housekeeping tasks without compensation as part of a rehabilitation or habilitation program.

R432-151-18. Transfer Agreements.
(1) This section shall apply in addition to R432-150-22.
(2) Each referral to and from the facility shall be governed by criteria that the most effective treatment in the least restrictive environment shall be available and accessible to a resident.
(a) The staff shall assess resident needs and provide necessary services within the facility according to its treatment capabilities.
(b) Services of other facilities shall be utilized when the resident requires care beyond the capabilities of the facility.
(3) Transfer agreements between facilities shall be obtained.
(a) Continuity of resident care shall be a joint responsibility between the facilities involved.
(b) Continuity of resident care is assured by providing:
(i) Reason(s) for the referral;
(ii) Information about the resident such as current treatment, medications, behavior, special precautions;
(iii) Current treatment objectives;
(iv) Suggestions for continued coordination between the receiving and referring facility;
(v) Information whom to contact, such as significant others or treatment coordinator.
(4) Residents shall not be transferred to another facility without prior contact with that facility. The referring treatment coordinator shall contact the receiving facility immediately or within 24 hours to insure temporary placement or admission.
(5) All information pertaining to clients shall be kept confidential and disclosed only by authorized staff to others directly involved in the resident's care and treatment except under the following conditions:
(a) When a resident's written informed consent is obtained to share specific information with appropriate parties;
(b) When an emergency exists with reason to believe there is imminent danger to the resident or others;
(c) When there is a court order to produce specific records;
(d) When the law enforcement agency requires release of specific pertinent information.

R432-151-19. Physician Services.
(1) This section shall apply in addition to R432-150-16.
(2) A physician should be responsible to monitor physical or medical needs; a psychiatrist must be responsible to monitor mental health needs and medications prescribed for these needs.
(3) General requirements.
(a) Each resident in need of psychiatric services shall be under the care of a psychiatrist licensed to practice in Utah.
(b) Each resident shall be permitted to choose a personal psychiatrist.
(c) Psychiatrist responsibilities.
(i) A psychiatrist must complete a psychiatric evaluation within 30 days prior to, or within one week after, admission.
(ii) Requirements for psychiatrist visits shall be the same as requirements for physician visits in R432-150-16. EXCEPT:
(A) Whenever possible, visits should be made on alternating months from physician visits.
(B) The psychiatrist shall see the resident whenever necessary but at least every other month at approximately 60-day intervals.
(C) The psychiatrist may have the option to establish and follow an alternate schedule of visits, but visits must not exceed four month intervals.
(D) A progress note shall be written in the resident's record at each visit.

R432-151-20. Nursing Services.
(1) Nursing services shall be available to residents who require such services.
(2) There shall be nursing staff available according to Table 1 to meet medical needs.
(a) There shall be 24-hour licensed nurse coverage.
(b) In a skilled nursing facility, a registered nurse shall be on duty at least sixteen hours per 24-hour period seven days a week to plan, assign, supervise or provide, and evaluate nursing care needs of the residents.
(3) All prescribed medications shall be administered by licensed personnel.
(4) In an intermediate care facility, if the health services supervisor is a licensed practical nurse, the registered nurse consultant shall be contacted within three days of a new admission to review the resident care plan.
(5) Schedules shall be maintained to indicate hours worked in the treatment program by regularly assigned and relief registered nurses, licensed practical nurses, and aides. The facility shall retain staff schedules and payroll records for at least a 12-month period.
(6) Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting actual time spent in nursing care and time spent in other tasks. Time spent in other tasks will not be included in nursing care staffing ratios.

(7) Table 1 represents the minimum acceptable standards for hours of nursing care; additional staffing time may be necessary to accommodate variables such as staff illness or vacation, resident census, or status and behavior of residents.

TABLE 1

HOURS OF NURSING CARE PER SKILLED AND INTERMEDIATE LEVEL RESIDENT

Type of Resident	Total Nursing Hours per Resident per 24 hrs. (RN + LPN + Aide)	Licensed Nursing Hours per resident per 24 hrs. (RN + LPN only)
SKILLED	2.5 (150 minutes)	30% (45 minutes)(a)
INTERMEDIATE	2.0 (120 minutes)	30% (36 minutes)(a)

(a) Shall not include director of nursing or health services supervisor in a facility with a resident census over 60.

R432-151-21. Resident Records.

(1) These rules shall apply in addition to R432-150-25 and shall provide emphasis regarding resident records.

(2) Contents of the resident record shall describe the resident's physical and mental health status at the time of admission, the services provided, the progress made, and the resident's physical and mental health status at the time of discharge.

(3) The resident record shall contain the following:

(a) Identifying data that is recorded on standardized forms:

(i) the resident's name;

(ii) home address;

(iii) home telephone number;

(iv) date of birth;

(v) sex;

(vi) race or ethnic origin;

(vii) next of kin;

(viii) education;

(ix) marital status;

(x) type and place of last employment;

(xi) date of admission;

(xii) legal status, including relevant legal documents;

(xiii) date the information was gathered; and names and signatures of the staff members gathering the information.

(b) Information for review and evaluation of treatment provided to the resident.

(c) Documentation of resident and family involvement in the treatment program.

(d) Prognosis.

(e) Information on any unusual occurrences, such as treatment complications; accidents or injuries to or inflicted by the resident, procedures that place the resident at risk, AWOL.

(f) Physical and mental diagnoses using a recognized diagnostic coding system.

(g) Progress notes written by the physician, psychiatrist. nurse, and others involved in active treatment.

(i) progress notes should contain an on-going assessment of the resident.

(ii) Progress notes shall be written in the resident's record by each professional discipline at least monthly for the first three months and every other month thereafter at approximately 60 day intervals.

(iii) Progress notes shall be summaries of notes written at more frequent intervals, as determined by the condition of the resident or by facility policy, including the following:

(A) Documentation which supports implementation of the resident care plan and the resident's progress toward meeting these planned goals and objectives;

(B) Documentation of all treatment and services rendered to the resident;

(C) Chronological documentation of the resident's clinical course;

(D) Descriptions of changes in the resident's condition;

(E) Descriptions of resident response to treatment, the outcome of treatment, and the response of significant others to these changes.

(iv) All entries involving subjective interpretation of the resident's progress should be supplemented with a description of the actual behavior observed.

(v) Efforts should be made to secure written progress reports from outside sources for residents receiving services away from the facility.

(h) Reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(i) Correspondence and signed and dated notations of telephone calls concerning the resident's treatment.

(j) A written plan for discharge including information about the following:

(i) Resident's preferences and choices regarding location and plans for discharge;

(ii) Family relationships and involvement with the resident;

(iii) Physical and psychiatric needs;

(iv) Realistic, basic financial needs;

(v) Housing needs;

(vi) Employment needs;

(vii) Educational/vocational needs;

(viii) Social needs;

(ix) Accessibility to community resources;

(x) Designated and documented responsibility of the resident or family for follow-up or aftercare.

(k) A discharge summary signed by the physician and entered into the resident record within 60 calendar days from the date of discharge;

(i) In the event a resident dies, the discharge statement shall include a summary of events leading to the death.

(ii) Transfer to another facility for more than 72 hours shall cause the resident record to be closed with a discharge summary.

(A) A new record shall be initiated at the time of readmission.

(B) If the interval from discharge to readmission is less than 30 days, previous assessments may be reviewed and a copy brought forward from the prior record. The assessment must be identified either as an original or as a copy, and include updated information.

(l) Reports of all assessments.

(m) Consents for release of information, the actual date the information was released, and the signature of the staff member who released the information:

(i) The facility may release pertinent information to personnel responsible for the individual's care without the resident's consent under the following circumstances:

(A) In a life-threatening situation;

(B) When an individual's condition or situation precludes obtaining written consent for release of information;

(C) When obtaining written consent for release of information would cause an excessive delay in delivering treatment to the individual.

(ii) When information has been released under the conditions listed in R432-151-21(3)(m), the transaction shall be entered into the resident's record, including at least the following:

(A) The date the information was released;

(B) The person to whom the information was released;

(C) The reason the information was released;

(D) The reason written consent for release of information could not be obtained;

(E) The specific information released;

(F) The name of the person who released the information.

(iii) The resident shall be informed of the release of information as soon as possible.

(n) Pertinent prior records available from outside sources.

(4) The confidentiality of the records of substance abuse residents shall be maintained according to 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

R432-151-22. Quality Assurance.

(1) This section shall apply in addition to R432-150-11.

(2) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated on at least a quarterly basis by an interdisciplinary quality assurance committee.

(3) A written report of findings from each meeting shall be submitted to the administrator and shall be available for review by the Department.

(4) Committee composition.

(a) Members of the quality assurance committee shall be appointed by name in writing by the administrator for a given term of membership.

(b) The committee shall have a minimum of three members with representation from at least three different licensed health care professions.

(5) Methodology for evaluation includes:

(a) Review and evaluation of active and closed resident records to assure that established policies and procedures are being followed;

(b) Facility policy and procedure will determine the method(s) to be followed for selection and review of the representative sample of active and closed records;

(c) Review and evaluation whether needed services were provided;

(d) Review and evaluation of coordination of services whenever appropriate through documentation of written reports, telephone consultation, or case conferences; and

(e) Review and evaluation of the resident plans of treatment for content, frequency of updates, and whether progress notes correspond to goals stated in the resident care plan.

R432-151-23. Housekeeping.

Housekeeping services shall comply with R432-150-26.

R432-151-24. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

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R432. Health, Family Health and Preparedness, Licensing.
R432-152. Mental Retardation Facility.
R432-152-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-152-2. Purpose.

It is the purpose of the rule to meet the intent of the Legislature as expressed in 26-21-13.5.

R432-152-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule. In addition, the following special definitions apply:

(a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(b) "Developmental Period" means the period between conception and the 18th birthday.

(c) "Direct Care Staff" means personnel who provide care, training, treatment or supervision of residents.

(d) "QMRP" means a Qualified Mental Retardation Professional as defined in 42 CFR 483.403(a), 1997.

R432-152-4. Licensure.

These rules apply to all Intermediate Care Facilities for the Mentally Retarded licensed prior to July 1, 1990, pursuant to 26-21-13.5.

R432-152-5. Construction and Physical Environment.

Intermediate Care Facilities for the Mentally Retarded shall be constructed and maintained in accordance with R432-5 Nursing Facility Construction.

R432-152-6. Governing Body and Management.

(1) The licensee shall identify an individual or group to constitute the governing body of the facility.

(2) The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility; and

(b) set the qualifications, in addition to the requirements of Title 58, Chapter 15, for the administrator of the facility.

(3) The licensee shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) The licensee shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator. The administrator shall supervise no more than one licensed nursing care facility or mental retardation facility.

(a) The administrator shall be on the premises of the facility a sufficient number of hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.

(b) The administrator shall designate, in writing, the name and title of a person to act as administrator in any temporary absence of the administrator. This designated person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review. The job description must include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) function as liaison between the licensee, qualified mental retardation professional, and other supervisory staff of the facility;

(c) respond appropriately to recommendations made by the facility committees;

(d) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(e) implement policies and procedures for the operation of the facility;

(f) hire and maintain the required number of licensed and non-licensed staff, as specified in these rules, to meet the needs of clients;

(g) maintain facility staffing records for at least the preceding 12 months;

(h) secure and update contracts for required professional and other services not provided directly by the facility;

(i) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(j) review all incident and accident reports and take appropriate action.

(6) The administrator, QMRP, and facility department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(a) The administrator or designee shall conduct and document periodic employee performance evaluations.

(b) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(7) The administrator shall establish policies and procedures for health screening that meet R432-150-10-4.

R432-152-7. Client Rights.

(1) The administrator is responsible to ensure the rights of all clients. The administrator or designee shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, voice grievances, and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

(2) The administrator shall establish and maintain a system that assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(a) The client's financial record shall be available on request to the client or client's legal guardian.

(b) The licensee must ensure that all monies entrusted to the facility on behalf of clients are kept in the facility or are deposited within five days of receipt in an insured interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah.

(c) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 must be deposited in an interest-bearing account as specified in R432-152-7(2)(b) above.

(d) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility must be surrendered upon demand and those kept in an interest-bearing account must be obtained and surrendered to the client in a timely manner.

(e) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee must be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. If a client dies without a representative or known heirs, the licensee must immediately notify in writing the local probate court and the Department.

(3) The administrator must promote communication, and encourage participation of clients, parents and guardians in the active treatment process. Facility staff shall:

(a) promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from clients' families and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(f) notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(4) The administrator is responsible to develop and implement written policies and procedures that prohibit abuse, neglect, or exploitation of clients.

(a) Any person, including a social worker, physician, psychologist, nurse, teacher, or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect, or exploitation shall immediately notify the nearest peace officer, law enforcement agency, or local office of Adult Protective Services pursuant to Section 62A-3-302.

(i) The administrator must document that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(ii) The administrator is responsible to report the results of all investigations within five working days of the incident. If the alleged violation is verified, the administrator shall take appropriate corrective action.

(iii) The administrator or designee shall plan and document annual inservice training of all staff on the reporting requirements of suspected abuse, neglect, and exploitation.

(b) A licensee shall not retaliate, discipline, or terminate an employee who reports suspected abuse, neglect, or exploitation for that reason alone.

R432-152-8. Facility Staffing.

(1) A Qualified Mental Retardation Professional must integrate, coordinate and monitor each client's active treatment program.

(2) Each client shall receive the professional services required to implement the active treatment program defined by each client's individual program plan.

(a) Professional program staff shall work directly with clients and with other staff who work with clients.

(b) The licensee shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(c) Professional program staff shall participate in on-going staff development and training of other staff members.

(d) Professional program staff must be licensed and provide professional services in accordance with each respective professional practice act as outlined in Title 58. A copy of the current license, registration or certificate must be posted or maintained in employee personnel files.

(e) Those professional program staff designated as a human services professional who do not fall under the jurisdiction of state licensure, certification, or registration requirements, specified in Title 58, shall have at least a bachelor's degree in a human services field, including, but not limited to: sociology, special education, rehabilitation counseling, and psychology.

(f) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of R432-152-8(2)(d) are not required:

(i) except for qualified mental retardation professionals;

(ii) except for the requirements of R432-152-8(2)(b) of this section concerning the facility's provision of enough qualified professional program staff; and

(iii) as otherwise specified by State licensure and certification requirements.

(3) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing as follows:

(a) clients for whom a physician has ordered a medical care plan;

(b) clients who are aggressive, assaultive or security risks;

(c) more than 16 clients; or

(d) each unit of sixteen or fewer clients within a multi-unit building.

(4) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness and to handle emergencies in each defined residential living unit housing as follows:

(a) clients for whom a physician has not ordered a medical care plan;

(b) clients who are not aggressive, assaultive or security risks; or

(c) residential living units housing sixteen or fewer clients.

(5) Sufficient support staff must be available so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(6) Clients or volunteers may not perform direct care services for the facility.

(7) The licensee shall employ sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(a) Direct care staff shall meet the following minimum ratios of direct care staff to clients:

(i) for each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2 (2.5 hours per client per 24 hour period);

(ii) for each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4 (2.0 hours per client per 24 hour period);

(iii) for each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4 (1.25 hours per client per 24 hour period).

(b) When there are no clients present in the living unit, a responsible staff member shall be available by telephone.

(8) Each employee shall have initial and ongoing training to include the necessary skills and competencies required to meet the clients' developmental, behavioral, and health needs.

R432-152-9. Volunteers.

(1) Volunteers may be included in the daily activities with clients, but may not be included in the staffing plan or staffing ratios.

(2) Volunteers shall be supervised by staff and oriented to client's rights and the facility's policies and procedures.

R432-152-10. Services Provided Under Agreements with Outside Sources.

(1) If a service required under this rule is not provided directly, the licensee shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

(a) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;

(b) provide that the licensee is responsible for assuring that the outside services meet the standards for quality of services contained in this rule.

(3) If living quarters are not provided in a facility owned by the licensee, the licensee remains directly responsible for the standards relating to physical environment that are specified in R432-5.

R432-152-11. Individual Program Plan.

(1) Each client shall have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in R432-152-12(4); and

(b) designing programs that meet the client's needs.

(2) Interdisciplinary team meetings shall include the following participants:

(a) representatives of other agencies who may serve the client; and

(b) the client and the client's legal guardian unless participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by R432-152-12, and the planned sequence for dealing with those objectives.

(a) The program objectives shall:

(i) be stated separately, in terms of a single behavioral outcome;

(ii) be assigned projected completion dates;

(iii) be expressed in behavioral terms that provide measurable indices of performance;

(iv) be organized to reflect a developmental progression appropriate to the individual; and

(v) be assigned priorities.

(b) Each written training program designed to implement the objectives in the individual program plan shall specify:

(i) the methods to be used;

(ii) the schedule for use of the method;

(iii) the person responsible for the program;

(iv) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) the inappropriate client behavior, if applicable; and

(vi) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(c) The individual program plan shall also:

(i) describe relevant interventions to support the individual toward independence;

(ii) identify the location where program strategy information, which shall be accessible to any person responsible for implementation, can be found;

(iii) include, for those clients who lack them, training in personal skills essential for privacy and independence, including toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs, until it has been demonstrated that the client is developmentally incapable of acquiring them;

(iv) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment, including the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;

(v) provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible; and

(vi) include opportunities for client choice and self-management.

(4) A copy of each client's individual program plan shall be made available to all relevant staff, staff of other agencies who work with the client or legal guardian.

(5) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(a) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(b) Except for those facets of the individual program plan

that may be implemented only by licensed personnel, each client's individual program plan shall be implemented by all staff who work with the client.

(6) The facility must document, in measurable terms, data and significant events relative to the accomplishment of the criteria specified in individual client program plans.

(7) The individual program plan shall be reviewed at least by the qualified mental retardation professional and revised as necessary; including situations in which the client:

(a) has successfully completed an objective or objectives identified in the individual program plan;

(b) is regressing or losing skills already gained;

(c) is failing to progress toward identified objectives after reasonable efforts have been made; or

(d) is being considered for training towards new objectives.

R432-152-12. Comprehensive Functional Assessment.

(1) Within 30 days after admission, the interdisciplinary team must complete accurate assessments or reassessments as needed to supplement the preliminary evaluation referred to in R432-152-14(3).

(2) The comprehensive functional assessment shall take into consideration the client's age and the implications for active treatment and shall:

(a) identify the presenting problems and disabilities and, where possible, their causes;

(b) identify a client's specific developmental strengths;

(c) identify a client's specific developmental and behavioral management needs;

(d) identify a client's need for services without regard to the actual availability of the services needed;

(e) include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors and independent living skills necessary for a client to be able to function in the community, and as applicable, vocational skills.

(3) The comprehensive functional assessment of each client shall be reviewed annually by the interdisciplinary team and updated as needed repeating the process required in R432-152-14.

R432-152-13. Human Rights Committee.

(1) The facility shall designate and use a specially constituted committee or committees consisting of members of the facility staff, parents, legal guardians, clients as appropriate, qualified persons who have experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(b) insure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian; and

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

R432-152-14. Admissions, Transfers, and Discharge.

(1) The facility may only admit clients who need active treatment services.

(2) The facility shall base its admission decision on a preliminary evaluation of the client. The preliminary evaluation may be conducted or updated by the facility or an outside source and must determine that the facility can provide for the client's needs and that the client is likely to benefit from placement in the facility.

(3) A preliminary evaluation shall contain background information as well as current valid assessments of the following:

(a) functional developmental,

(b) behavioral status,

(c) social status, and

(d) health and nutritional status.

(4) Client transfers and discharges must comply with the requirements of R432-150-22.

R432-152-15. Client Behavior and Facility Practices.

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.

(2) The policies and procedures shall:

(a) promote the growth, development and independence of the client;

(b) address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management to the extent possible;

(c) specify client conduct to be allowed or not allowed; and

(d) be available to all staff, clients, parents of minor children, and legal guardians.

(3) To the extent possible, clients shall participate in the formulation of these policies and procedures.

(4) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(5) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior.

(a) The policies and procedures shall be consistent with the provisions of R432-152-15(2).

(b) The policies and procedures shall:

(i) specify all facility-approved interventions to manage inappropriate client behavior;

(ii) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and

(iii) ensure, prior to the use of more restrictive techniques, that less restrictive measures have been implemented with the results documented in the client's record.

(c) The policies and procedures shall address the following:

(i) the use of time-out rooms;

(ii) the use of physical restraints;

(iii) the use of chemical restraints to manage inappropriate behavior;

(iv) the application of painful or noxious stimuli;

(v) the staff members who may authorize the use of specified interventions; and

(vi) a mechanism for monitoring and controlling the use of such interventions.

(d) Interventions to manage inappropriate client behavior shall be employed with safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(e) A facility may not utilize p.r.n. or as needed programs to control inappropriate behavior.

(6) A client may be placed in a time-out room from which egress is prevented only if the following conditions are met:

(a) The placement is part of an approved systematic time-out program as required by R432-152-15(5).

(b) The client is under the direct constant visual supervision of designated staff.

(c) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(d) Placement of a client in a time-out room shall not exceed one hour per incident of maladapted behavior.

(e) Clients placed in time-out rooms shall be protected from hazardous conditions including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets.

(f) The facility must maintain a log for each time-out room.

(7) A facility may employ physical restraints only:

(a) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(b) as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(c) as a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(8) A facility may apply emergency restraints for initial or extended use for no longer than 12 consecutive hours for the combined initial and extended use time period provided that authorization is obtained as soon as the client is restrained or stable.

(9) A facility may not issue orders for restraint on a standing or as needed basis.

(10) Facility staff must check clients placed in restraints at least every 30 minutes and maintain documentation of these checks.

(a) Restraints must be applied to cause the least possible discomfort and may not cause physical injury to the client.

(b) Facility staff must provide and document opportunity for motion and exercise for a period of not less than 10 minutes during each two hour period in which a restraint is employed.

(c) Barred enclosures shall not be more than three feet in height and shall not have tops.

(11) The facility shall not administer drugs at a dose that interferes with a client's daily living activities.

(a) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(b) Drugs used for control of inappropriate behavior shall be:

(i) monitored closely, in conjunction with the physician and the drug review requirement; and

(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

R432-152-16. Physician Services.

(1) The facility shall ensure the availability of physician services 24 hours a day.

(a) The physician shall develop, in coordination with facility licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that the client requires 24-hour licensed nursing care.

(b) The care plan shall be integrated into the client's program plan.

(c) Each client requiring a medical care plan of treatment shall be admitted by and remain under the care of a health practitioner licensed to prescribe medical care for the client.

(d) The facility shall obtain written orders for medical treatment (documented telephone orders are acceptable) at the time of admission.

(e) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum includes:

(i) an evaluation of vision and hearing;

(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;

(iii) routine screening laboratory examinations, as determined necessary by the physician, and special studies when needed; and

(iv) tuberculosis control in accordance with R388-804, Tuberculosis Control Rule.

(2) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by R432-152-11.

(a) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(b) A physician shall participate in the discharge planning of clients under a medical care plan of treatment. In cases of discharge against medical advice, the facility must immediately notify the attending physician.

R432-152-17. Nursing Services.

(1) The facility shall provide nursing services in accordance with client needs. Nursing services shall include:

(a) participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client if the physician has determined that an individual client requires such a plan; and

(c) for those clients certified as not needing a medical care plan, a documented quarterly health status review by direct physical examination conducted by a licensed nurse including identifying and implementing nursing care needs as prescribed by the client's physician.

(2) Nursing services shall coordinate with other members of the interdisciplinary team to implement appropriate protective and preventive health measures that include:

(a) training clients and staff as needed in appropriate health and hygiene methods;

(b) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(c) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(3) Nursing practice and delegation of nursing tasks must comply with R156-31b-701, Delegation of Nursing Tasks.

(a) If the facility utilizes only licensed practical nurses to provide health services, there must be a formal arrangement for a registered nurse to provide verbal or on-site consultation to the licensed practical nurse.

(b) Non-licensed staff who work with clients under a medical care plan must be supervised by licensed nursing personnel.

(4) The administrator shall employ and designate, in writing, a nursing services supervisor.

(a) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.

(b) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.

(5) The nursing services supervisor is responsible to

ensure that the following duties are carried out:

(a) establish a system to assure nursing staff implement physician orders and deliver health care services as needed;

(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each client's needs are met;

(c) review each client's health care needs and orders for care and treatment;

(d) review client individual program plans to assure necessary medical aspects are incorporated;

(e) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(f) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care rendered and include the client's response;

(g) teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the client;

(h) inform the administrator, attending physician, and family of significant changes in the client's health status;

(i) when appropriate, plan with the physician, family, and health-related agencies for the care of the client upon discharge;

(j) develop, with the administrator, a nursing services procedure manual including all procedures practiced in the facility;

(k) coordinate client services through appropriate quality assurance and interdisciplinary team meetings;

(l) respond to the pharmacist's quarterly medication report;

(m) develop written job descriptions for all levels of nursing personnel and orient all new nursing personnel to the facility and their duties and responsibilities;

(n) complete written performance evaluations for each member of the nursing staff at least annually; and

(o) plan or conduct documented training programs for nursing staff and clients.

R432-152-18. Dental Services.

(1) The facility shall provide or arrange for comprehensive dental diagnostic services and comprehensive dental treatment for each client.

(a) "Comprehensive dental diagnostic services" means:

(i) a complete extra-oral and intra-oral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility, unless the client's record contains an examination that was completed within twelve months before admission;

(ii) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(iii) a review of the results of examination and entry of the results in the client's dental record.

(b) "Comprehensive Dental Treatment":

(i) the available emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(ii) dental care needed for relief of pain and infection, restoration of teeth, and maintenance of dental health.

(2) If appropriate, a dental professional shall participate in the development, review and update of the individual program plan as part of the interdisciplinary process, either in person or through written report to the interdisciplinary team.

(3) The facility shall provide education and training for clients and responsible staff in the maintenance of clients' oral health.

(4) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client with a dental summary maintained in the client's living unit.

(5) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's record.

R432-152-19. Pharmacy Services.

(1) The facility shall provide routine and emergency drugs and biologicals.

(a) Drugs and biologicals may be obtained from community or contract pharmacists, or the facility may maintain a licensed pharmacy.

(b) Pharmacy services shall be under the direction and responsibility of a qualified, licensed pharmacist. The pharmacist may be employed full time by the facility or may be retained by contract.

(c) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator. Pharmacy policies shall address:

(i) drug orders;

(ii) labeling;

(iii) storage;

(iv) emergency drug supply;

(v) administration of medications;

(vi) pharmacy supplies; and

(vii) automatic-stop orders.

(2) The pharmacist, with input from the interdisciplinary team, shall review the drug regimen of each client at least quarterly.

(a) The pharmacist shall report any irregularities or errors in a client drug regimen to the prescribing physician and interdisciplinary team.

(b) The pharmacist shall develop and review a record of each client's drug regimen.

(3) An individual medication administration record shall be maintained for each client.

(4) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan, either in person or through written report to the interdisciplinary team.

(5) The facility shall have an organized system for drug administration that identifies each drug up to the point of administration. The system shall assure that all medications and treatments:

(a) are administered in compliance with the physician's orders;

(b) are administered without error; and

(c) are administered by licensed medical or licensed nursing personnel.

(6) Clients shall be taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective.

(a) The client's physician shall be informed of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client.

(b) No client may self-administer medications until he or she demonstrates the competency to do so.

(7) Each telephone orders for medications shall be recorded immediately including the date and time of the order and the receiver's signature and title. The order must be countersigned and dated within 15 days by the person who prescribed the order.

(8) The facility shall maintain records of the receipt and disposition of all controlled drugs.

(a) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition shall be readily traced.

(b) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV, drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et sec., as implemented by 42 CFR Part 308.

(9) The facility shall store drugs under proper conditions

of sanitation, temperature, light, humidity, and security.

(a) All controlled substances shall be secured in a manner consistent with applicable state pharmacy laws.

(b) Provision shall be made for the separate secure storage of all non-medication items such as poisonous and caustic materials.

(c) Medication containers shall be clearly labeled.

(d) Only persons authorized by facility policy shall have access to medications.

(e) Medication intended for internal use shall be stored separately from medication intended for external use.

(f) Medications stored at room temperature shall be maintained within 59 - 80 degrees F (15 to 30 degrees C); and refrigerated medications shall be maintained within 36 - 46 degrees F (2 to 8 degrees C).

(g) Medications and similar items that require refrigeration shall be stored securely and segregated from food items.

(h) Medications shall be kept in the original pharmacy container and shall not be transferred to other containers. Drugs taken out of the facility for home visits, workshops, school, etc. shall be packaged and labeled in accordance with State law by a person authorized to package medications.

(i) Clients who have been trained to self administer drugs in accordance with R432-152-19(6) may have access to keys to their individual drug supply.

(10) Labeling of drugs and biologicals shall:

(a) be based on currently accepted professional principles and practices; and

(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(11) The facility shall remove from use outdated drugs and drug containers with worn, illegible, or missing labels.

(12) Drugs and biologicals packaged in containers designated for a particular client shall be immediately removed from the client's current medication supply if discontinued by the physician.

(13) Drugs may be sent with the client upon discharge if so ordered by the discharging physician provided that the drugs are released in compliance with Utah pharmacy law and rules and a record of the drugs sent with the client is documented in the client's health record.

(14) Discontinued individual client drugs supplied by prescription or those which remain in the facility after discharge or death of the client shall be destroyed within one month by the facility in the following manner:

(a) All drugs shall be destroyed by the facility in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility.

(b) If one or both of these persons are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses.

(c) These appointments shall be rotated periodically among responsible staff members.

(d) The name of the client, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction, and the signatures of the witnesses required above shall be recorded in the client's record or in a separate log and retained for at least three years.

(15) Unless otherwise prohibited under applicable federal or state laws, individual client drugs supplied in sealed containers may be returned, if unopened, to the issuing pharmacy for disposition provided that:

(a) no controlled drugs are returned;

(b) all such drugs are identified as to lot or control number; and

(c) the signatures of the receiving pharmacist and a licensed nurse employed by the facility are recorded and retained for at least three years in a separate log which lists the name of the client, the name, strength, prescription number, if applicable, the amount of the drug returned, and the date of return.

(16) An emergency drug supply appropriate to the needs of the clients served shall be maintained in the facility.

(a) The pharmacist in coordination with the administrator shall develop an emergency drug supply policy to include the following requirements:

(i) Specific drugs and dosages to be included in the emergency drug supply shall be listed.

(ii) Containers shall be sealed to prevent unauthorized use.

(iii) Contents of the emergency drug supply shall be listed on the outside of the container and the use of contents shall be documented by nursing staff.

(iv) The emergency drug supply shall be accessible to nursing staff.

(v) The pharmacist shall inventory the emergency drug supply monthly. Used or outdated items shall be replaced within 72 hours.

(17) The pharmacy shall furnish drugs and biologicals as follows:

(a) Drugs ordered for administration as soon as possible shall be available and administered within two hours of a physician's order.

(b) Anti-infectives shall be available and administered within four hours of a physician's order.

(c) All new drug orders shall be initiated within 24 hours of the order or as indicated by the physician.

(d) Prescription drugs shall be refilled in a timely manner.

(e) Orders for controlled substances shall be sent to the pharmacy within 48 hours of the order. The order sent to the pharmacy may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.

R432-152-20. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the client population.

(2) Laboratory services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-152-21. Environment.

(1) Infection control procedures and reporting shall comply with R432-150-11(4).

(2) The facility shall have a safety committee which includes the administrator, QMRP, head housekeeper, chief of facility maintenance, and others as designated by facility policy.

(a) The safety committee must:

(i) review all incident and accident reports and recommend changes to the administrator to prevent or reduce reoccurrence;

(ii) review facility safety policies and procedures at least annually, and make appropriate recommendations; and

(iii) establish a procedure to inspect the facility periodically for hazards.

(b) Inspection reports shall be filed with the safety committee.

R432-152-22. Emergency Plan and Procedures.

(1) The facility shall develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(a) The facility shall periodically review and update written emergency procedures.

(b) The emergency plan must be made available to the staff.

(c) Facility staff must receive periodic training on emergency plan procedures.

(d) The emergency plan shall address the following:

(i) evacuation of occupants to a safe place within the

facility or to another location;

(ii) delivery of essential care and services to facility occupants by alternate means;

(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;

(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency; and

(v) maintenance of safe ambient air temperatures within the facility. Ambient air temperature of at least 58 degrees F. Must be maintained during emergencies.

(e) Emergency heating must be approved by the local fire department.

(2) The facility's emergency plan shall identify:

(a) the person with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency, in order of priority;

(f) method of transporting and evacuating clients and staff to other locations; and

(g) conversion of facility for emergency use.

(3) Emergency telephone numbers shall be posted near telephones accessible to staff.

(4) Simulated disaster drills shall be held semi-annually for all staff, in addition to fire drills. Documentation shall be maintained for Department review.

(5) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers.

(b) The written fire-emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and fire drill documentation shall be in accordance with Buildings Under the Jurisdiction of the State Fire Prevention Board, R710-4.

(d) The facility shall evacuate clients during at least one drill each year on each shift including:

(i) making special provisions for the evacuation of clients with physical disabilities;

(ii) filing a report and evaluation on each evacuation drill; and

(iii) investigating all problems with evacuation drills, including accidents, and take corrective action.

R432-152-23. Smoking Policies.

Smoking policies shall comply with UCA Title 26, Chapter 38, the "Utah Indoor Clean Air Act", and Sections 12-7.4 and 13-7.4 of the 1997 Life Safety Code.

R432-152-24. Pets in Long-Term Care Facilities.

(1) Each facility shall develop a written policy regarding pets in accordance with these rules and local ordinances.

(2) The facility shall adhere to the requirements of R432-150-21.

R432-152-25. Housekeeping Services.

(1) There shall be housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details all services provided.

(3) The housekeeping service shall meet all the requirements of R432-150-26.

R432-152-26. Laundry Services.

The facility shall adhere to the requirements of R432-150-27.

R432-152-27. Maintenance Services.

The facility shall adhere to the requirements of R432-150-28.

R432-152-28. Dietary Services.

The facility shall adhere to the requirements of R432-150-24.

R432-152-29. Client Records.

(1) The facility shall develop and maintain a record keeping system that includes a separate record for each client with documentation of the client's health care, active treatment, social information, and protection of the client's rights.

(a) The facility shall keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(b) The facility shall develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or client's legal guardian.

(c) All entries into client records must be legible, dated and signed by the individual making the entry.

(d) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.

(e) The facility shall insure each identified residential living unit has available on-site pertinent information of each client's record.

(f) Client's records shall be complete and systematically organized according to facility policy to facilitate retrieval and compilation of information.

(2) The client record department shall be under the direction of a registered record administrator, RRA, or an accredited record technician, ART. If an RRA or ART is not employed at least part time, the facility shall consult at least semi-annually with an RRA or ART according to the needs of the facility.

(3) Client records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(4) Client records shall be protected against access by unauthorized individuals.

(5) Client records shall be retained for at least seven years after the last date of client care.

(a) Records of minors shall be retained as follows:

(i) at least two years after the minor reaches age 18 or the age of majority; and

(ii) a minimum of seven years.

(b) All client records shall be retained within the facility upon change of ownership.

(c) If a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all client records, client indices, and discharges for the period specified.

(d) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.

R432-152-30. Respite Care.

(1) Mental Retardation Facilities may provide respite services that comply with the following requirements:

(a) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or

daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days are a mental retardation facility admission, and shall be subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete a service agreement to serve as the plan of care. The service agreement must identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(f) The facility shall have written policies and procedures available to staff regarding the respite care clients which include:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees; and

(viii) handling personal funds.

(g) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon initial day of service and updated annually.

(h) The facility shall maintain a record for each person receiving respite services which includes:

(i) Retention and storage of records shall comply with R432-152-29(3) and (4).

(ii) Confidentiality and release of information shall comply with R432-150-25(3).

(iii) The record shall contain the following:

(A) a service agreement;

(B) demographic information and resident identification data;

(C) nursing notes;

(D) physician treatment orders;

(E) records made by staff regarding daily care of the person in service;

(F) accident and injury reports; and

(G) a post-service summary.

(i) If a person has an advanced directive, a copy shall be filed in the record and staff informed.

R432-152-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Family Health and Preparedness, Licensing.
R432-200. Small Health Care Facility (Four to Sixteen Beds).
R432-200-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-200-2. Purpose.

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability for self-preservation: to exit a building unassisted in an emergency.

R432-200-3. Compliance.

All small health care facilities shall be in full compliance at the time of licensure. All Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.

R432-200-4. Definitions.

(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.

(i) Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is the availability of skilled nursing care or related service on an extended basis.

(ii) Intermediate Care Facility shall provide 24-hour in resident care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(c) "Level II" refers to a facility that provides at least 24-hour care, 24-hour staff coverage, and licensed therapy or nursing care (based on program requirements) to 4-16 persons who are non-mobile and non-ambulatory. Level II facilities may include:

(i) Health Care Nursery shall provide full-time supervision and care to children under six years of age who do not require continuous nursing care. The facility shall provide at least the following:

(A) Twenty-four hour care and/or staff availability;
(B) Provision for medical coverage;
(C) Provision for dietary services;
(D) Provision for licensed therapies, as required.

(ii) Intermediate Care Facility for the Mentally Retarded shall provide 24-hour supervisory care to developmentally disabled and mentally retarded individuals, (note: An ICF/MR facility may be categorized as a Level IV facility if no resident is under therapy that utilizes chemical or physical restraints which may render the resident incapable of self-preservation in an emergency), who need supervision in a coordinated and integrated program of health, habilitative and supportive services, but who do not require continuous nursing care. The facility shall, except as indicated in the supplement, provide the following:

(A) Twenty-four hour care and staff availability;
(B) Provision for medical coverage;
(C) Provision for dietary services;
(D) Provision for licensed therapies, as required.

(iii) Home for the Aging shall provide group housing, supervision, social support, personal care, therapy, and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:

(A) Twenty-four hour staff availability;
(B) Provision for medical coverage;
(C) Provision for dietary services for at least three meals;
(D) Provision for licensed therapies, as necessary.

(iv) Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation, and treatment for alcoholism, drug abuse, or mental problems to persons who do not require intermediate or skilled nursing care. (Note: if each resident in the program is certified by a physician or QMRP as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.) The facility shall provide the following:

(A) Twenty-four hour staff availability or program care;
(B) Provision for medical coverage;
(C) Provision for dietary services for at least three meals;
(D) Provision for licensed therapies, as necessary.

(d) "Level III" refers to a facility that provides at least 24-hour staff coverage and licensed therapy (based on program requirements) to 4-16 persons who are ambulatory and mobile but who are under chemical or physical restraints. Level III facilities may include:

(i) Mental Health Facility shall provide 24 hour care to persons with mental illness who require medical and psychiatric supervision including diagnosis and treatment. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;
(B) Provision for medical and psychiatric supervision;
(C) Provision for dietary services;
(D) Provision for licensed therapies, as necessary.

(ii) Youth Correction Center shall provide 24-hour supervision, care, training, treatment, and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;
(B) Provision for medical and psychiatric supervision;
(C) Provision for dietary services;
(D) Provision for licensed therapies, as necessary.

(e) "Level IV" refers to a facility that provides specialized program and support care to 4-16 persons who are ambulatory and mobile, who require programs of care and more supervision than provided in a residential care facility. Level IV facilities may include:

(i) Intermediate Care Facility for the Mentally Retarded. All mentally retarded residents in a Level IV facility must be ambulatory to qualify for Medicaid/Medicare reimbursement.

(ii) Mental Health Facility. (See R432-200-4(2)(d)(i), Level III)

(iii) Home for the Aging. (See R432-200-4(2)(c)(iii), Level II)

(iv) Social Rehabilitation Facility. (See R432-200-4(2)(c)(iv), Level II)

R432-200-5. License Required.

See R432-2.

R432-200-6. Construction and Physical Environment.

(1) See R432-12, Small Health Care Facility Construction rules.

R432-200-7. Administration and Organization.

(1) Organization.

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.

(a) Administrator's Appointment.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.

(a) Organization.

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident- care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-10(4).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;
(h) Oral hygiene and first aid; and
(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;
(j) Training in habilitative care;
(k) Reporting abuse, neglect and exploitation.

R432-200-8. Smoking Policies.
Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-200-9. Contracts and Agreements.
(1) Contracts.
(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.
(b) Contracts shall include:
(i) The effective and expiration dates of the contract;
(ii) A description of goods or services provided by the contractor to the facility;
(iii) A statement that the contractor will conform to the standards required by Utah law or rules.
(c) The contract shall be available for review by the Department.
(2) Transfer Agreements.
(a) The licensee shall maintain, a written transfer agreement with one or more hospitals (or nearby health facilities) to facilitate the transfer of residents and essential resident information.
(b) The transfer agreement shall include provisions for:
(i) Criteria for transfer;
(ii) Appropriate methods of transfer;
(iii) Transfer of information needed for proper care and treatment of the individual being transferred;
(iv) Security and accountability of the personal property of the individual being transferred;
(v) Proper notification of the hospital and next of kin or responsible person before transfer.

R432-200-10. Quality Assurance.
(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.
(2) The committee shall include the administrator, consulting physician or medical director, health services supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.
(3) The committee shall meet quarterly and keep minutes of the proceedings.
(4) Infection Control Requirements.
See R432-150-11.
(5) Pharmacy Requirements.
Based on the services offered, the committee shall:
(a) Monitor the pharmaceutical services in the facility;
(b) Recommend changes to improve pharmaceutical services;
(c) Evaluate medication usage; and
(d) Develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.
(6) Resident Care Requirements.
Based on the services offered, the committee shall address the following:
(a) Review, at least annually, the facility's resident care policies including rehabilitative and habilitative programs, as appropriate.
(b) Make recommendations to the medical director and advisory physician as appropriate;
(c) Review recommendations from other facility committees to improve resident care.
(7) Safety Requirements.
Based on the services offered, the committee shall address the following:
(a) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their reoccurrence;
(b) Review facility safety policies and procedures, at least annually, and make recommendations;
(c) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Committee.

R432-200-11. Emergency and Disaster.
(1) Facilities have the responsibility to assure the safety and well-being of their residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.
(2) Policies and Procedures.
(a) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.
(b) The written plan shall be distributed to all facility staff to assure prompt and efficient implementation.
(c) The plan shall be reviewed and updated to conform with local emergency plans, at least annually, by the administrator and the licensee.
(d) The plan shall be available for review by the Department.
(3) Staff and residents shall receive education, training, and drills to respond in an emergency.
(a) Drills and training shall be documented and comply with applicable laws and regulations.
(b) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and emergency transport systems shall be posted.
(4) Emergency Procedures.
The facility's response procedures shall address the following:
(a) Evacuation of occupants to a safe place within the facility or to another location;
(b) Delivery of essential care and services to facility occupants by alternate means;
(c) Delivery of essential care and services when additional persons are housed in the facility during an emergency;
(d) Delivery of essential care and services to facility occupants when staff is reduced by an emergency;
(e) Maintenance of safe ambient air temperatures within the facility;
(i) Emergency heating plans must have the approval of the local fire department.
(ii) An ambient air temperature of 58 degrees F (14 degrees C) or less constitutes an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate and appropriate action in the best interests of the resident.
(5) Emergency Plan.
(a) The facility's emergency plan shall delineate:
(i) The person or persons with decision-making authority for fiscal, medical, and personnel management;
(ii) On-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an

emergency or disaster;

(iii) Assignment of personnel to specific tasks during an emergency;

(iv) Methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) The individuals who shall be notified in an emergency in the order of priority. Telephone numbers shall be accessible to staff at each nurse's station;

(vi) Methods of transporting and evacuating residents and staff to other locations;

(vii) Conversion of facility for emergency use.

(b) Documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.

(c) Drills shall be held semi-annually for all residents and staff.

(d) There shall be regular in-service training on disaster prepare

(6) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted throughout the facility.

(c) The written fire-emergency plan shall include fire-containment procedures and how to use alarm systems and signals.

(d) Fire and internal disaster drills shall be held, at least quarterly, under varied conditions for each shift.

(i) The actual evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.

(ii) The actual evacuation of residents during a drill on the night shift is optional.

R432-200-12. Residents' Rights.

(1) Residents' Rights Policies and Procedures.

(a) A committee shall be appointed to update policy, evaluate, and act on residents' rights complaints.

(b) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, or guardian, or next of kin.

(c) These shall be available to the public and the Department upon request.

(2) Each resident admitted to the facility shall have the following rights:

(a) To be fully informed, as evidenced by the resident's written acknowledgement prior to or at the time of admission and during stay, of residents' rights and of all rules governing resident conduct;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act;

(c) To be fully informed of his medical condition, by a physician, unless medically contraindicated and documented in the resident's health record by the attending physician;

(d) To be afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To be transferred or discharged only for medical reasons, or his welfare or that of other residents, or for nonpayment for his stay, and to be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in his health record;

(g) To be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff or outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(h) To manage his personal financial affairs, or to be given at least quarterly or upon request an accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-12);

(j) To be assured confidential treatment of his personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another health facility, or as required by law or third party payment contract;

(k) To be treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for personal needs;

(l) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

(m) To associate and communicate privately with persons of his choice, and to send and receive personal mail unopened;

(n) To meet with and participate in activities of social, religious, and community groups at his discretion;

(o) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(p) If married, to be assured privacy for visits by his spouse and if both are residents in the facility, to be permitted to share a room;

(q) To have daily visiting hours established;

(r) To have members of the clergy admitted at the request of the resident or person responsible at any time;

(s) To allow relatives or persons responsible to visit residents at any time;

(t) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(u) To have reasonable access to telephones both to make and receive confidential calls.

(v) To wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3) Safeguards for Residents' Monies and Valuables

Each facility to whom a resident's money or valuables have been entrusted according to R432-200- 12(2)(h), above shall comply with the following:

(a) No licensee shall use residents' monies or valuables as his own or mingle them with his own.

(i) Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(ii) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(b) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account shall be kept current with columns for debits, credits, and balance.

(c) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of

the receipt furnished to the resident or to the person responsible for the resident.

(d) Residents' monies not kept in the facility shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank authorized to do business in Utah, the deposits of which must be insured.

(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(f) When the amount of residents' money entrusted to a licensee exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-200-12(3)(c) and (d) above.

(g) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three normal banking days.

(h) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court, and a copy of said notice shall be filed with the Department.

R432-200-13. Admission and Discharge.

Each facility shall develop admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(c) There shall be a written order (a documented telephone order is acceptable) for admission and care at the time of admission.

(d) A resident shall be assessed within seven days of admission unless otherwise indicated by a program requirement. Admission policies shall define the assessment process including an identification of the resident's medical, nursing, social, physical, and emotional needs.

(e) A physical examination shall be performed, in accordance with R432-200-14(2), by the attending physician or by an individual licensed and so authorized.

(f) Upon admission, a brief narrative of the resident's condition including his temperature, pulse, respiration, blood pressure, and weight shall be documented.

(g) The resident shall be informed of his rights as a resident.

(i) A written copy of the facility's residents' rights shall be explained and given to the resident.

(ii) If the resident is unable to comprehend his rights, a written copy shall be given to the next of kin or other responsible party.

(iii) The inability of the resident to provide consent shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's identified needs.

(b) There shall be an order for the resident's discharge by the physician or person in charge of the resident's care.

(c) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

(d) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt (see R432-200-12(3)).

R432-200-14. Physician Services.

(1) General Requirements.

(a) Each resident in need of nursing services, habilitative, or rehabilitative care shall be under the care of a licensed physician.

(b) Each resident shall be permitted to choose his physician.

(c) Upon admission, each resident shall have orders for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination at least annually.

(b) Each intermediate care resident shall be seen at least once during the first 60 days of residency.

(c) The attending physician or medical practitioner shall see the resident whenever necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently.

(d) The physician or practitioner shall establish and follow a schedule alternating visits.

(e) Each visit and evaluation shall be documented in the resident's record.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician services in case of medical emergency or when the attending physician is not available;

(b) Names and telephone numbers of on-call physicians in the health services supervisor's office;

(c) Reevaluation of the resident and review of care and treatment orders when there is a change of attending physician which shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following practitioners may render medical services according to state law:

(a) Nurse practitioners licensed to practice in the state of Utah;

(b) Physicians' assistants working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Rules and Regulations and Standards for Utilization of Physician Assistants.

(5) Physician Orders and Notes.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician:

(i) Admission orders;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Physician's progress notes;

(v) The discharge summary;

(vi) All discharge orders;

(b) All telephone orders shall be recorded immediately and include:

(i) date and time of order;

(ii) the receiver's signature and title; and

(iii) the order shall be countersigned and dated within 15 days by the physician who prescribed the order.

(c) The attending physician shall complete the resident's

medical record within 60 days of the resident's discharge, transfer, or death.

(6) Notification of Physician.

(a) The attending physician shall be notified promptly upon:

(i) Admission of the resident;

(ii) A sudden and/or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) The discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective. Notification shall be documented.

(b) The physician shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician shall be posted at the control station.

(c) All attempts to notify physicians shall be noted in the resident's record including the time and method of communication and the name of the person acknowledging contact, if any.

R432-200-15. Nursing Care.

(1) Organization.

(a) Each facility shall provide nursing care services commensurate with the needs of the residents served.

(b) All licensed nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Responsibilities of the Health Services Supervisor.

The health services supervisor shall have the following responsibilities and comply with R432-1-3(55):

(a) Direct the implementation of physician's orders;

(b) Plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Ensure that nursing notes describe the care rendered including the resident's response. Instruct staff on the legal requirements of charting;

(f) Supervise clinical staff to assure they perform restorative measures in their daily care of residents;

(g) Teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

(h) Keep the administrator and attending physician informed of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies the care of the resident upon discharge;

(j) Coordinate resident services through the quality assurance committees (see R432-200-10);

(k) Assign qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

(l) Develop written job descriptions for all health service personnel and orient all new personnel to the facility and their duties and responsibilities;

(m) Evaluate and document the performance of each member of the staff at least annually. This evaluation shall be available for Departmental review;

(n) Plan and conduct documented orientation and in-service programs for staff.

(3) Required Staffing Hours.

(a) Any facility that provides nursing care shall provide at least two hours (120 minutes) of nursing-staff coverage (RN + LPN + Aides) per resident per 24 hours of which 20 percent or 24 minutes per resident shall be provided by licensed staff (RN + LPN).

(b) Facilities providing rehabilitative or habilitative care shall:

(i) Provide adequate staff care and supervision to meet the resident's needs based on the resident-care plan, or;

(ii) Conform to the specific program requirements in the appropriate supplement.

(c) The above requirements are minimum only. Additional staff may be necessary to ensure adequate coverage in the event of staff illness, turnover, sudden increase in resident population, or similar event.

(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.

(4) Nursing or Health Care Services.

(a) The health services procedure manual shall be reviewed and updated annually by the health services supervisor.

(b) The manual shall be accessible to all clinical staff and available for review by the Department.

(c) The procedures shall address the following:

(i) Bathing;

(ii) Positioning;

(iii) Enema administration;

(iv) Decubitus prevention and care;

(v) Bed making;

(vi) Isolation procedures;

(vii) Clinitest procedures;

(viii) Laboratory requisitions;

(ix) Telephone orders;

(x) Charting;

(xi) Rehabilitative nursing;

(xii) Diets and feeding residents;

(xiii) Oral hygiene and denture care;

(xiv) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only).

(5) Measures to Reduce Incontinence.

Measures shall be implemented to prevent and reduce incontinence for each resident.

(a) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) A weekly evaluation of the resident's performance in the bowel/bladder management program shall be recorded in the resident's record by a licensed nurse.

(d) Fluid intake and output shall be recorded for each resident as ordered by the physician or charge nurse.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Physician's or nurse's orders shall be reevaluated periodically.

(6) Rehabilitative Nursing.

Nursing personnel shall be trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the

activities of daily living.

(c) Rehabilitative nursing services shall include the following:

(i) Turning and positioning of residents;

(ii) Assisting residents to ambulate;

(iii) Improving resident's range of motion;

(iv) Restorative feeding;

(v) Bowel and bladder retraining;

(vi) Teaching residents self-care skills;

(vii) Teaching residents transferring skills;

(viii) Teaching residents self-administration of medications, as appropriate;

(ix) Taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

R432-200-16. General Resident Care Policies.

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) Each facility shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-200-13(1).

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises, and

(iv) redirecting residents interests as necessary.

(f) Residents must be reevaluated annually to determine if a less restrictive setting might be more appropriate to help them achieve independence.

(g) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(h) Each resident shall be provided with good nutrition and adequate fluids for hydration.

(i) All residents shall have ready access to water and drinking glasses;

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner;

(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(i) Visual privacy shall be provided for each resident during treatments and personal care.

(j) Call lights or signals (where required) shall be answered promptly.

(k) Humidifier bottles on oxygen equipment shall be sterile and changed every 24 hours or at the manufacturers direction.

(4) Notification of Family.

The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.

R432-200-17. Resident-Care Plans.

(1) General Provisions.

(a) A written resident-care plan, coordinated with nursing and other services, shall be initiated for each resident upon admission.

(b) The resident-care plan shall be personalized and indicate measurable and time-limited objectives, the actual plan of care, and the professional discipline responsible for each element of care.

(c) The resident care plan shall be developed, reviewed, revised, and updated at least annually through conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(d) Each resident's care shall be based on this plan.

(e) The resident-care plan shall be available to all personnel who care for the resident.

(f) The resident and family shall participate in the development and review of the resident's plan.

(g) Upon transfer or discharge of the resident, relevant information from the resident-care plan shall be available to the responsible institution or agency.

(h) A licensed nurse or other clinical specialist, where appropriate, shall summarize, each month, the resident's status and problems identified in the resident-care plan.

(2) Resident-Care Plans Contents.

The resident-care plan shall include at least the following:

(a) Name, age, and sex of resident;

(b) Diagnosis, symptoms, complaints;

(c) A description of the functional level of the individual;

(d) Care objectives and time frames for accomplishment, reevaluation, and completion;

(e) Discipline or person responsible for each objective;

(f) Discharge plan;

(g) Date of admission;

(h) Name of attending physician or medical practitioner.

R432-200-18. Medication Administration.

(1) Standing Orders.

Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.

(2) Administration of Medication and Treatments.

Medication and treatment shall be administered as follows:

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel. Student doctors and nurses may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled time of administration shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(g) Medication shall be administered by the same person who prepared the dose for administration.

(h) Residents shall be identified prior to the administration of any drug or treatment.

(i) No medication shall be used for any resident other than the resident for whom it was prescribed.

(j) If the person who prescribed a medication does not limit the duration of the drug order or the number of doses, the facility's automatic stop-order policy shall indicate how long a drug may be administered. The prescriber shall be notified

before the medication is discontinued.

(k) All orders for treatment or therapy shall contain:

(i) the name of the treatment or therapy,

(ii) the frequency and time to be administered,

(iii) the length of time the treatment or therapy is to continue,

(iv) the name and professional title of the practitioner who gave the order,

(v) the date of order, and

(vi) signature of the person prescribing the treatment or therapy.

(l) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the profession.

(m) Injectable medications shall be administered only by authorized persons.

(i) If a physician certifies that a resident is capable of administering his own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications.

(ii) The physician's order, authorizing the resident's self-administration of medications, shall be documented and available for Departmental review.

R432-200-19. Behavior Management and Restraint Policy.

See R432-150-14.

R432-200-20. Resident Care Equipment.

(1) The facility shall provide equipment, in good working order, to meet the needs of residents.

(2) Disposable and single-use items shall be properly disposed of after use.

(3) Resident care equipment shall include at least the following:

(a) Self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care. Facility policy may require that residents obtain their own equipment for long-term use;

(b) Blood pressure apparatus and stethoscopes, appropriate to the needs and number of residents;

(c) Thermometers appropriate to the needs of residents;

(d) Weight scales to weigh all residents;

(e) Bedpans, urinals, and equipment to clean them;

(f) Water pitchers, drinking glasses, and resident gowns;

(g) Drug service trays;

(h) Access to emergency oxygen including equipment for its administration;

(i) Emesis basins;

(j) Linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the facility's licensed bed capacity. There shall be a bedspread for each resident bed;

(k) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(l) An individual chart for each resident;

(m) Gloves (sterile and unsterile);

(n) Ice bags.

R432-200-21. Pharmacy Service.

The facility shall make provision for pharmacy service.

(1) This service shall be under the direction of a qualified pharmacist currently licensed in the state of Utah.

(2) The pharmacist may be retained by contract.

(3) The pharmacist shall develop policies, direct, supervise and assume responsibility for any pharmacy services offered in the facility.

(4) Pharmacy services shall meet R432-150-19.

R432-200-22. Dietary Services.

(1) Organization.

(a) There shall be an organized dietary service that provides safe, appetizing, and nutritional food service to residents.

(b) The service shall be under the supervision of a qualified dietetic supervisor or consultant.

(c) If a facility contracts with an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) See R432-150-24.

R432-200-23. Social Services.

(1) The facility shall provide social services which assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.

(2) This service may be provided by a consultant.

(3) See R432-150-17.

(4) Responsibilities.

Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:

(a) Provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;

(b) Participate in ongoing discharge planning to guarantee continuity of care;

(c) Initiate referrals to official agencies when the resident needs financial assistance;

(d) Maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;

(e) Preserve the dignity and rights of each resident;

(f) Maintain records, including a social history and social-services-needs evaluation, (updated annually);

(g) Integrate social services with other elements of the resident-care plan.

R432-200-24. Recreation Services.

(1) There shall be an organized resident activity program for the group and for each resident in the facility.

(2) See R432-150-20.

R432-200-25. Laboratory and Radiology Services.

(1) The facility shall make provision for laboratory and radiology services.

(2) See R432-150-18, Laboratory Services, and R432-150-23, Ancillary Health Services.

R432-200-26. Dental Services.

The facility shall make provision for annual and emergency dental care for residents. Such provisions shall include:

(1) Developing oral hygiene policies and procedures with input from dentists;

(2) Presenting oral hygiene in-service programs by knowledgeable persons to both staff and residents;

(3) Allowing resident's freedom of choice in selecting their own private dentists;

(4) Developing an agreement with a dental service for those residents who do not have a personal dentist;

(5) Arranging transportation to and from the dentist's office.

R432-200-27. Specialized Rehabilitative Services.

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) Services may be offered either on-site or off-site.

(c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer the full scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of a licensed therapist at all times.

(d) Speech pathologists shall be licensed under Title 58, Chapter 41.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of residents.

(c) An appropriate plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment has begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident's record of the specialized plan of treatment.

R432-200-28. Medical Records.

(1) Organization.

(a) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation.

(b) There shall be written policies and procedures to accomplish these purposes.

(c) The medical record service shall be under the direction of a registered record administrator (RRA) or an accredited record technician (ART).

(d) If an RRA or an ART is not employed at least part-time, the facility shall consult at least annually with an RRA or ART according to the needs of the facility.

(e) A designated individual in the facility shall be responsible for day-to-day record keeping.

(2) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Medical records shall be retained for at least seven years after the last date of resident care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(c) All resident records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records.

(3) Release of Information.

(a) There shall be written procedures for the use and removal of medical records and the release of information.

(b) Medical records shall be confidential.

(i) Information may be disclosed only to authorized persons in accordance with federal, state, and local laws.

(ii) Requests for other information which may identify the resident (including photographs) shall require the written consent of the resident or guardian if the resident is judged incompetent.

(c) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

(4) Physician or Licensed Practitioner Documentation

Rubber-stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

(5) Medical Record.

(a) Records shall be permanent (typewritten or hand written legibly in ink) and capable of being photocopied.

(b) Records shall be kept for all residents admitted or accepted for treatment and care.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each resident.

(d) All records of discharged residents shall be completed and filed within 60 days of discharge.

(e) All entries shall be authenticated including date, name or identified initials, and title of persons making entries.

(6) Contents of the Medical Record

A facility shall maintain an individual medical record for each resident which shall include:

(a) Admission record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;

(b) Admission and subsequent diagnoses and any allergies;

(c) Reports of physical examinations signed and dated by the physician;

(d) Signed and dated physician orders for drugs, treatments, and diet;

(e) Signed and dated progress notes including but not limited to:

(i) Records made by staff regarding the daily care of the resident;

(ii) Informative progress notes by appropriate staff recording changes in the resident's condition. Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;

(iii) Documentation of administration of all "PRN" medications and the reason for withholding scheduled medications;

(iv) Documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) Documentation of oxygen administration;

(vi) Temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) Laboratory reports of all tests prescribed and completed;

(viii) Reports of all x-rays prescribed and completed;

(ix) Records of the course of all therapeutic treatments;

(x) Discharge summary including a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) A copy of the transfer form when the resident is transferred to another health care facility;

(xii) Resident-care plan.

R432-200-29. Housekeeping Services.

Organization.

(1) There shall be adequate housekeeping services to maintain a clean sanitary and healthful environment in the

facility.
(2) See R432-150-26.

R432-200-30. Laundry Services.
(1) There shall be adequate laundry service to provide clean linens and clothing for residents and staff.
(2) See R432-150-27.

R432-200-31. General Maintenance.
(1) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.
(2) See R432-150-28.

R432-200-32. Penalties.
Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
October 1, 2011 26-21-5
Notice of Continuation March 28, 2012 26-21-6

R432. Health, Family Health and Preparedness, Licensing.
R432-201. Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule.
R432-201-1. Legal Authority.

This rule is adopted pursuant to Section 26-21-13.5.

R432-201-2. Purpose.

The purpose of this rule is to meet the legislative intent pursuant to 26-21-13.5.

R432-201-3. Special Definitions.

(1) See R432-1-3.

(2) Special Definitions.

(a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(b) "Developmental Period" means the period between conception and the 18th birthday.

R432-201-4. Compliance.

All facilities governed by these rules shall be in full compliance at the time of initial licensure.

R432-201-5. Licensure.

(1) See Categories of licensure R432-200-4(2).

(2) See R432-2.

R432-201-6. Construction and Physical Environment.

See R432-12, Small Health Care Facility Rules.

R432-201-7. Governing Body and Management.

(1) Governing Body.

The facility shall identify an individual or group to constitute the governing body of the facility.

(2) Duties and Responsibilities.

The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility;

(b) set the qualifications for the administrator of the facility;

(c) appoint the administrator of the facility.

(3) Compliance with Federal, State, and Local Laws.

The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) Administrator.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(a) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(b) The administrator shall act as the administrator of no more than four small health care facilities and no more than a total of 60 beds in any type of licensed health care facility.

(c) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in each business day (at least four hours per week for each six clients) and as necessary to properly manage the facility and respond to requests by the Department and the public.

(d) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being.

(ii) It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) Administrator Responsibilities.

(a) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review.

(b) The job description shall include responsibility to insure the following duties are fulfilled:

(i) complete, submit, and file all records and reports required by the Department;

(ii) act as a liaison with the licensee, qualified mental retardation professional, QMRP, and other supervisory staff of the facility;

(iii) respond to recommendations made by the facility committees;

(iv) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(v) implement policies and procedures for the operation of the facility;

(vi) hire and maintain the required number of licensed and nonlicensed staff, as specified in these rules, to meet the needs of clients;

(vii) maintain facility staffing records for at least the preceding 12 months;

(viii) secure and update contracts for required professional and other services not provided directly by the facility;

(ix) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(x) review all incident and accident reports and document action taken.

(A) Incident and accident reports shall be numbered and logged in a manner to account for all reports.

(B) Incident and accident reports shall have space for written comments by the administrator and, as appropriate, the attending physician and constituted committee.

(C) Original incident and accident reports shall be kept on file in the facility and shall be available for review by the Department.

R432-201-8. Staff and Personnel.

(1) Staff Qualifications and Orientation.

(a) The administrator, QMRP, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) Periodic employee performance evaluations shall be documented.

(c) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(2) Health Surveillance.

(a) The facility shall establish policies and procedures for the health screening of all facility personnel.

(b) See R432-150-10(4).

(c) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(3) Qualified Mental Retardation Professional, QMRP.

(a) Each client's active treatment program shall be integrated, coordinated and monitored by a qualified mental retardation professional.

(b) The qualified mental retardation professional shall meet the standards in R432-152-9(1)(b)(i) through (ii).

(4) Professional Program Services.

See R432-152-9(2)(a) through (f).

(5) Direct Care Staffing.

See R432-152-9(3)(a) through (d).

(6) Residential Living Unit Staff.

See R432-152-9(4)(a) through (d).

(7) Staff Training Program.
See R432-152-9(5)(a) through (d).

R432-201-9. Volunteers.
Volunteers may be utilized in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees. See R432-152-10.

R432-201-10. Contracts and Agreements.
(1) Contracts.
(a) If a service required under this subpart is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.
(b) The agreement shall:
(i) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;
(ii) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.
(c) The facility shall assure that outside services meet the needs of each client.
(d) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in R432-200-6 and R432-152-22.
(2) Transfer Agreements.
(a) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals, or nearby health facilities to facilitate the transfer of clients and essential client information.
(b) The transfer agreement shall include provisions for:
(i) criteria for transfer;
(ii) appropriate methods of transfer;
(iii) transfer of information needed for proper care and treatment of the individual transferred;
(iv) security and accountability of personal property of the individual transferred;
(v) proper notification of the hospital and the responsible person before transfer;
(vi) the facility responsible for client care in the process of transfer;
(vii) client confidentiality.

R432-201-11. Client Rights.
(1) The facility shall ensure the rights of all clients.
(2) The facility shall:
(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;
(b) inform each client, parent, if the client is a minor, or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;
(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process, and each client shall be afforded the opportunity to voice grievances and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;
(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;
(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;
(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;
(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;
(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;
(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;
(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;
(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;
(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;
(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day;
(n) permit a married couple both of whom reside in the facility to reside together as a couple.
(3) Client Finances.
(a) The facility shall establish and maintain a system that:
(i) assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients;
(ii) precludes any commingling of client funds with facility funds or with the funds of any person other than another client.
(b) The client's financial record shall be available on request to the client, parents, if the client is a minor, or legal guardian.
(c) All monies entrusted to the facility on behalf of the clients shall be kept in the facility or shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.
(d) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-201-11(3) above.
(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle client funds from one facility with another.
(f) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within a reasonable time.
(g) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. When a client dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.
(4) Communication with Clients, Parents, and Guardians.
The facility shall:
(a) promote participation of parent, if the client is a minor, and legal guardian in the process of providing active treatment

to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from a client's family and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to a client, such as family, close friends, legal guardian and advocate, at any reasonable hour, without prior notice, consistent with the right of a client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care service to a client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations;

(f) notify promptly a client's parent or guardian of any significant incident, or change in a client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(5) Staff Treatment of Clients.

(a) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of a client.

(i) Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff shall not punish a client by withholding food or hydration that contribute to a nutritionally adequate diet.

(b) The facility shall prohibit the employment of individuals with a conviction or prior employment history of child, client abuse, spouse abuse, neglect or mistreatment.

(c) The facility shall ensure that all allegations of mistreatment, neglect, or abuse, or injuries of unknown source, are reported immediately to the administrator and to other officials in accordance with 62A-3-302 through established procedures.

(d) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(e) The results of all investigations shall be reported to the administrator or designated representative and to other officials within five working days of the incident and, if the alleged violation is verified, appropriate corrective action shall be taken.

R432-201-12. Client Treatment Services.
See R432-152-13.

R432-201-13. Admissions, Transfers, and Discharge.

(1) A client who is admitted by the facility shall be in need of and receive active treatment services.

(2) See R432-152-14, Admissions, Transfer and Discharge.

R432-201-14. Behavior Management and Restraint Policy.

(1) See R432-152-15, Client Behavior and Facility Practice.

(2) See R432-152-13, Human Rights Committee.

R432-201-15. Physician Services.
See R432-152-16.

R432-201-16. Nursing Services.
See R432-152-17.

R432-201-17. Dental Services.
See R432-152-18.

R432-201-18. Pharmacy Services.
See R432-152-19.

R432-201-19. Laboratory Services.
See R432-152-20.

R432-201-20. Environment.
See R432-152-21.

R432-201-21. Emergency Plan and Procedures.
See R432-152-22.

R432-201-22. Smoking Policies.
Smoking policies shall comply with R432-200-8.

R432-201-23. Pets in Long-Term Care Facilities.
Each facility shall develop a written policy regarding pets in accordance with R432-150-21.

R432-201-24. Housekeeping Services.
See R432-150-26.

R432-201-25. Laundry Services.
See R432-150-27.

R432-201-26. Maintenance Services.
See R432-150-28.

R432-201-27. Food Services.
See R432-150-24.

R432-201-28. Record System.
See R432-152-29.

R432-201-29. Penalties.
Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
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R432. Health, Family Health and Preparedness, Licensing.
R432-300. Small Health Care Facility - Type N.
R432-300-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensing.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) "Dependent" means a person who meets one or all of the following criteria:

(a) requires inpatient hospital or 24 hour continual nursing care that will last longer than 15 calender days after the day on which the nursing care begins;

(b) is unable to evacuate from the facility without the physical assistance of two persons.

(3) "Health care setting" means a health care facility or agency, either public or private, that is involved in the provision or delivery of nursing care.

(4) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of a resident.

(5) "Owner or licensee" means a licensed nurse who resides in the facility and provides daily direct care during daytime hours to residents in the facility as opposed to simply working a duty shift in the facility.

(6) "Semi-independent" means a person who is:

(a) physically disabled, but able to direct his own care; or

(b) cognitively impaired or physically disabled, but able to evacuate from the facility with the physical assistance of one person.

(7) "Significant change" means a major change in a resident's status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the service plan.

(8) "Small Health Care Facility - Type N" means a home or a residence occupied by the licensee, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the licensee.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee must meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

(1) provide care in a residence where the licensee lives full time;

(2) meet local zoning requirements to allow the facility to be operated at the given address;

(3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) have a physician assessment and approval for each resident's admission;

(5) provide daily, licensed nursing care; and

(6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

(1) The licensee must provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms may be private or semi-private.

(a) Single-bed rooms must have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms must have a minimum of 80 square feet of floor space per bed and are limited to two beds.

(c) Beds shall be placed at least three feet away from each other.

(d) The licensee's family members or staff shall not share sleeping quarters with residents.

(e) Each resident shall have a separate twin size or larger sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) may be used as a sleeping room for a resident.

(g) Each bedroom must have light and ventilation.

(h) Each bedroom must have a window to the outside which opens easily. Windows must have insect screens.

(i) Each bedroom must have a closet or space suitable for hanging clothing and personal belongings.

(j) Each bedroom and toilet room must have a trash container.

(k) The licensee must make available reading lamps in each resident room according to the individual needs of each resident.

(3) Toilets and bathrooms must provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.

(a) Toilets, tubs, and showers must have ADAAG approved grab bars.

(b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.

(4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.

(a) Heating systems must be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling systems must be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.

(5) Residents may be housed on the main floor only, unless an outside exit leading to the ground grade level is provided from any upper or lower levels.

(6) At least one building entrance shall be accessible to persons with physical disabilities.

R432-300-8. Administration and Organization.

(1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation. Facilities licensed prior to July 1, 1998, that do not have a licensed nurse residing in the facility, must provide 24 hour certified nurse aide coverage.

(4) The licensee must employ sufficient staff to meet the needs of the residents.

(5) All employees must be 18 years of age, and

successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records that are filed, stored safely, and are easily accessible to staff and the Department.

(2) Records must be protected against access by unauthorized individuals.

(3) The licensee must maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) an employee application;

(b) the date of employment and initial policies and procedures orientation;

(c) the termination date;

(d) the reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) a health inventory;

(g) a food handlers permit;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) an admission diagnoses and reason for admission;

(f) any known allergies;

(g) the admission agreement;

(h) a copy of an advanced directive or living will initiated by the resident;

(i) a physician's assessment;

(j) a resident assessment;

(k) a written plan of care;

(l) physician orders;

(m) daily nursing notes including temperature, pulse, respirations, blood pressure, height, and weight notations when indicated or as needed due to a change in the resident's condition;

(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and

(o) incident and accident reports.

(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residents.

(1) A Type N Small Health Care facility may accept semi-dependent residents.

(a) The licensee may accept one dependent resident only if the licensee has equipment and additional staff available to assist the dependent resident in the event of a facility emergency evacuation.

(b) The licensee must establish acceptance criteria which includes:

(i) the resident's health needs;

(ii) the residents's ability to perform activities of daily living; and

(iii) the ability of the facility to address the residents needs.

(2) A resident shall not be accepted nor retained by a Type "N" Small Health Care Facility when:

(a) The resident has active tuberculosis or serious communicable diseases;

(b) The resident requires inpatient hospital care; or

(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.

(3) The licensee must request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

R432-300-11. Transfer or Discharge Requirements.

(1) The licensee may discharge, transfer, or evict a resident for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases operation.

(2) Prior to transferring or discharging a resident, the licensee must serve a transfer or discharge notice to the resident and the resident's responsible person.

(a) The notice must be either hand-delivered or sent by certified mail.

(b) The notice must be made at least 30 days before the day on which the licensee plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the

resident's urgent medical needs.

(3) The notice of transfer or discharge must:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident or the resident's responsible person can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident or responsible party may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The licensee must provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the licensee shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the licensee, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-300-12. Personal Physician.

(1) Each resident must have a personal physician. The physician's assessment must be completed prior to admission.

(2) The physician's signed assessment shall document:

(a) that the resident is capable of functioning in a Type N Small Health Care Facility;

(b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;

(c) a list of current medications including dosage, time of administration, route, and assistance required;

(d) type of diet and restrictions or special instructions;

(e) any known allergies; and

(f) any physical or mental limitations, or restrictions on activity.

R432-300-13. Nursing Care.

(1) Each Type N facility must provide nursing care services to meet the needs of the residents.

(2) A licensed nurse must be on-site working directly with residents on a daily basis in accordance with each resident's care plan and individual needs.

(3) Nursing practice must be in accordance with the Utah Nurse Practice Act Section 58-31b-102(10).

(4) Licensed nurses have the following responsibilities:

(a) direct the implementation of physician's orders;

(b) develop and implement an individualized care plan for each resident within seven calender days of admission, and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review and update at least every six months the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review each resident's medication regimen as needed and immediately after medication changes to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate resident care and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop and maintain a current health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

(i) bathing;

(ii) positioning;

(iii) enema administration;

(iv) decubitus prevention and care;

(v) bed making;

(vi) isolation procedures;

(vii) blood sugar monitoring procedures;

(viii) telephone orders;

(ix) charting;

(x) rehabilitative nursing;

(xi) diets and feeding residents;

(xii) oral hygiene and denture care;

(xiii) medication administration;

(xiv) Alzheimer's/dementia care;

(xv) universal precautions and blood-borne pathogens; and

(xvi) housekeeping and cleaning procedures.

(6) Each resident's care plan must include measures to prevent and reduce incontinence.

(a) The licensed nurse must assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse must document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output must be recorded for each resident and evaluated at least weekly when ordered by a physician or nurse.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) The licensee must provide daily and document rehabilitative nursing services for residents who require such services.

(b) Rehabilitative nursing services shall include the following:

(i) turning and positioning of residents as per physician's or nurse's orders;

(ii) assisting residents to ambulate;

(iii) improving resident's range of motion;

(iv) restorative feeding;

(v) bowel and bladder retraining;

(vi) teaching residents self-care skills;

(vii) teaching residents transferring skills; and

(viii) taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident must be treated as an individual with dignity and respect in accordance with Residents' Rights R432-270-9.

(2) The licensee is responsible to develop and implement resident care policies. These policies must address the following:

(a) The licensee must orient each resident upon admission to the facility, services, and staff.

(b) Each resident must receive care to ensure good personal hygiene, including bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(c) Linens and other items in contact with the resident must be changed weekly or as the item is soiled.

(d) The licensee is responsible to encourage and assist each resident to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises; and

(iv) redirecting residents interests as necessary.

(e) Each resident must receive care and treatment to ensure the prevention of decubitus ulcers, contractures, and deformities.

(f) Each resident must receive good nutrition and adequate fluids for hydration.

(i) All residents must have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents who require assistance with eating or drinking must be provided with adaptive equipment.

(g) Each resident has the right to visual privacy during treatments and personal care. Visual privacy may be provided by privacy curtains or portable screens.

(h) Facility staff must answer call lights or monitoring devices promptly.

(3) The licensee must notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification must be documented in the resident's record.

(4) The licensee is responsible to assist residents in making arrangements for medical and dental care including transportation to and from the medical or dental facility.

(5) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

(6) The licensee is responsible to document and implement a quality improvement process that at least quarterly identifies problems, implements corrective actions, and evaluates the effectiveness of the corrective actions.

R432-300-15. Medications.

(1) A licensed health care professional must upon admission and at least every six months thereafter assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided must be documented on a Department approved form in each resident's service plan.

(2) Each resident's medication program must be administered by means of one of the methods as described in (a) through (c) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the licensee must assess each resident's ability to safely have medications in the unit. If safety is a factor, the resident must keep medications in a locked container in the unit.

(b) The resident requires assistance from facility staff to administer medications. Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing that the resident takes the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(viii) Facility staff must document any staff assistance with medication administration including the type of medication and when it was taken by the resident.

(c) The resident's family or designated responsible person assists the resident with medication administration. Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If family members or a designated responsible person assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document the type of medication, the time administered, and the amount taken by the resident.

(3) Medication records must include the following information:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) the name of the medication, including prescribed dosage;

(d) the times and dates administered;

(e) the method of administration;

(f) signatures of staff or responsible persons administering the medication; and

(g) the review date.

(4) Any change in the dosage or schedule of medication administration must be ordered by the resident's licensed practitioner and be documented in the medication record. All facility staff or persons assisting with medication administration must be notified of the medication change.

(5) The licensee must have available in the facility a current pharmacological reference book with information on possible reactions and precautions to any medications taken by a resident.

(6) The resident's family and licensed practitioner must be notified if medications errors occur.

(7) Medications must be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, residents shall have timely access to the medication.

(b) Medications that require refrigeration must be stored separately from food items and at temperatures between 36 - 46 degrees F.

(8) The administration, storage, and handling of oxygen must comply with the requirements of the 1996 edition of NFPA 99, which is adopted and incorporated by reference.

(9) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) A licensed health care professional must document the return to the resident or the resident's responsible person of

medication stored in a central storage.

(c) Disposal of controlled substances must comply with the Pharmacy Practice Act, which is adopted and incorporated by reference.

R432-300-16. First Aid.

(1) The licensee must ensure that at least one staff person is on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed. First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(2) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(3) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(4) Each facility must have an OSHA approved clean-up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The licensee must provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program must include the residents' needs and interests to include:

(a) socialization activities;

(b) independent activities of daily living; and

(c) physical activities;

(4) A resident may participate in community activities away from the facility.

R432-300-18. Food Service.

(1) The licensee must provide three meals a day plus snacks, seven days a week, to all residents.

(a) The licensee must maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) Meals must be served with no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food must be of good quality and be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) All food served to residents must be palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may be used as a beverage only upon the resident's request. It may be used in cooking and baking at any time.

(2) A different menu must be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents must be recorded and retained for three months for review by the Department.

(3) Meals must be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(4) Residents shall be encouraged to eat their meals in the dining room with other residents.

(5) The licensee must make available for review inspection reports by the local health department.

(6) If the licensee admits residents requiring therapeutic or special diets, an approved dietary manual must be available for reference when preparing meals. Dietitian consultation must be provided at least quarterly and documented for residents requiring therapeutic diets.

(7) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(8) All personnel who prepare or serve food must have a current Food Handler's Permit.

(9) Food service must comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, which is adopted and incorporated by reference.

R432-300-19. Housekeeping and Maintenance Services.

(1) The licensee must provide housekeeping and maintenance services to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways must be maintained and kept free of ice, snow, and other hazards.

(3) The licensee must implement a cleaning schedule to ensure that furniture, bedding, linens, and equipment are cleaned periodically and before use by another resident.

(4) The licensee must control odors by maintaining cleanliness and proper ventilation. Deodorizers may not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) The licensee must provide laundry services to meet the needs of the residents.

(6) The licensee must ensure that all cleaning agents, bleaches, pesticides, or other poisonous, dangerous or flammable materials are stored in a locked area to prevent unauthorized access.

R432-300-20. Pets.

(1) The licensee may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets such as birds and hamsters must be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds must have procedures which prevent the transmission of psittacosis.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-300-21. Disaster and Emergency Preparedness.

(1) The licensee is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee is responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public

utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan must be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility fire extinguishing equipment;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations including specialized training to assist a dependent resident;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The licensee must develop, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) The licensee must ensure that staff and residents receive instruction and training in accordance with the plans to respond appropriately in an emergency. The licensee must:

(a) annually review the procedures with existing staff and residents and conduct unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The licensee must be in charge during an emergency. If not on the premises, the licensee must make every effort to report to the facility, relieve subordinates and take charge.

(7) The licensee must provide in-house equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The licensee must post the following information in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes including the location of exits and fire extinguishers

R432-300-22. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities
October 1, 2011 26-21-5
Notice of Continuation March 28, 2012 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 2008, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2 and R432-3.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 2008, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

(a) The Communicable Disease Rule, R386-702;

(b) Tuberculosis Control Rule, R388-804; and

(c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B within the first two weeks of beginning employment.

(4) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

(a) patient rights and responsibilities;
(b) kidney disease processes;
(c) hemodialysis process;
(d) hemodialysis complications;
(e) dialysis access and management;
(f) psycho-social implications of dialysis on patient care;
(g) nutritional requirements;
(h) universal precautions;
(i) use of the medical emergency kit;
(j) use and function of facility equipment;
(k) emergency procedures;
(l) AAMI water treatment standards; and
(m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

(a) cannulation of peripheral vascular access;

(b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and

(c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and supplies. The medical director shall determine and approve the contents of the kit.

(2) Each ESRD facility must have available on-site an emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee, the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) R432-4-1 through R432-4-22 is adopted and incorporated by reference.

(2) ESRD Facilities shall comply with NFPA 101 Life Safety Code, Chapter 20 except that an essential electrical system is not required.

(3) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient for treatment related procedures or personal care.

(4) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(5) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(6) A separate blood borne infectious isolation patient treatment room shall be provided and shall:

(a) be fully enclosed;

(b) contain a handwash sink;

(c) contain widows to permit observation of the patient from the nurse station and other treatment areas;

(d) contain space for clean and soiled gowns and supplies; and

(e) be dedicated to patients with blood borne diseases and shall not be used by patients without blood borne diseases.

(7) If an airborne infectious isolation room is required to control airborne infection, the airborne infectious isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process. The room shall be tightly sealed and all air from the room shall be exhausted. Exhaust air shall be a minimum of 125 cubic feet per minute greater than supply air.

(a) The airborne infectious isolation rooms may be used for patients without airborne communicable disease when not in use as an isolation room.

(8) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(9) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile materials, the work counter and hand washing facilities may be omitted.

(10) Each ESRD facility must provide a soiled work room that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(11) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled

to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(12) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(13) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(14) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(15) Each ESRD facility must provide a supply area or supply carts.

(16) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(17) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(18) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(19) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(20) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(21) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(22) Each ESRD facility must provide a secure storage area for patients' belongings.

(23) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(24) Office and clinical work space shall be available for administrative services.

(25) All finishes shall be tight fitting, easily maintained and cleanable, resistant to cleaning chemicals, and detailed to minimize the potential for microbial growth.

(26) The reprocessing room, water treatment room, supply rooms, clean and soiled work rooms, soiled holding rooms shall be lockable and restricted to authorized personnel only.

(27) The reprocessing room, soiled work, holding room, and environmental services closet shall have continuous exhaust ventilation at the rate of not less than 10 air changes per hour and sufficient to generate inward air flow.

(28) Patient and public toilet rooms and exam rooms shall be equipped with an emergency call system. The call system shall require only momentary contact to activate, shall identify the source of the call and shall be cancelable only at the source of the call. The call system in toilet rooms shall be accessible to a collapsed patient lying on the floor. Inclusion of a pull cord will satisfy this requirement.

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
March 28, 2012 **26-21-5**
Notice of Continuation March 28, 2012 **26-21-16**

R432. Health, Family Health and Preparedness, Licensing.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner;

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a

clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual providing home health services;

(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be maintained in an organized format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) A written plan of care;

(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) Reasons for referral to home health agency;

(e) Statement of the suitability of the patient's place of residence for the provision of health care services;

(f) Documentation of telephone consultation or case conferences with other individuals providing services;

(j) Signed and dated clinical notes for each patient contact or home visit including services provided

(h) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;
(iii) General physical condition;
(iv) General emotional condition;
(v) Positive or negative physical and emotional responses to treatments and services;
(vi) General behavior; and
(vii) General appearance.
(f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.
(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.
(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.
(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.
(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.
(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.
(3) The agency shall demonstrate concern for cost of care by evaluation of the following:
(a) Relevance of health care services;
(b) Appropriateness of treatment frequency;
(c) Use of less expensive, but still effective, resources whenever possible;
(d) Use of ancillary services consistent with patient needs.
(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.
(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.
(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.
(5) The methodology for evaluation shall include but is not limited to:
(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;
(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;
(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.
(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
(4) Nursing staff shall observe, report, and record written clinical notes.
(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.
(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.
(7) Licensed nurses shall have the following responsibilities:
(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;
(c) Inform the physician and other personnel of changes in the patient's condition and needs;
(d) Write clinical notes in the individual patient record for each visit or contact;
(e) Teach self-care techniques to the patient or family, or both;
(f) Develop plans of care;
(g) Participate in in-service programs.
(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:
(a) Designate a registered nurse to act as director of nursing services during his absence;
(b) Assume responsibility for the quality of nursing services provided by the agency;
(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;
(d) Establish work schedules for nursing personnel according to patient needs;
(e) Assist in development of job descriptions for nursing personnel;
(f) Complete performance evaluations for nursing personnel according to agency policy;
(g) Direct in-service programs for all nursing personnel.
(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:
(a) Make the initial nursing evaluation visit;
(b) Re-evaluate nursing needs based on the patient's status and condition;
(c) Initiate the plan of care and make necessary revisions;
(d) Provide services which require specialized nursing skill;
(e) Initiate appropriate preventive and rehabilitative nursing procedures;
(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree ot supervision needed;
(g) Assist in coordinating all services provided;
(h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;

(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the certified nursing aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every three months to patients who require long-term maintenance services;

(iv) Any time there is a question of change in the patient's condition.

(10) The licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

The certified nursing aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The certified nursing aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patients;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

(14) Certified Nursing Aides shall be at least 18 years old.

(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:

(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;

(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

R432-700-23. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:

(a) Receive written instructions from the supervisor;

(b) Perform only the tasks and duties outlined in the service agreement;

(c) Have knowledge of agency policy and procedures;

(d) Be trained in first aid;

(e) Be oriented and trained in all aspects of care to be provided to clients;

(f) Be able to demonstrate competency in all areas of training for personal care; and

(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;

(2) Personal Care Aides may assist clients with the following activities:

(a) Self-administration of medications by:

(i) reminding the client to take medications, and

(ii) opening containers for the client;

(b) Housekeeping;

(c) Personal grooming and dressing;

(d) Eating and meal preparation;

(e) Oral hygiene and denture care;

(f) Toileting and toilet hygiene;

(g) Arranging for medical and dental care including transportation to and from the appointment;

(h) taking and recording oral temperatures;

(i) Administering emergency first aid;

(j) Providing or arranging for social interaction;

(k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;
(i) Necessary safety measures;
(j) Instructions, if any, to patient and/or family;
(k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW)or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
October 1, 2011 26-21-5
Notice of Continuation March 28, 2012 26-21-2.1

R432. Health, Family Health and Preparedness, Licensing.
R432-750. Hospice Rule.
R432-750-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychosocial, spiritual and bereavement care for dying persons and their families.

(5) A hospice provides services through an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(e) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(f) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(g) "Hospice" means a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and their families.

(h) "Hospice Administrator" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(i) "Hospice Care" means the care given to the terminally ill and their families which occurs in a home or in a health facility and which includes medical, palliative, psychosocial, spiritual, bereavement and supportive care and treatment.

(j) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

(k) "Interdisciplinary Team" means a team composed of physician (attending and medical director), nurse, social worker, pastoral care provider, volunteer, patient and family, and any other professionals as indicated.

(l) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

(m) "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms

(n) "Pastoral Care Provider" means an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.

(o) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(q) "Spiritual" means patient's and families' beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity which may or may not be of a religious nature.

(r) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function which without aggressive intervention, survival is anticipated to be six months or less.

(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.

(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(u) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

R432-750-6. Eligibility.

These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.

R432-750-7. Governing Body and Administration.

(1) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body is responsible to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose,

(ii) a statement of qualifications for membership and methods to select members of the governing board,

(iii) a provision for the establishment, selection, and term of office for committee members and officers,

(iv) a description of functions and duties of the governing body officers and committees,

(v) a statement of the authority and responsibility delegated to the hospice administrator, and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the licensing agency in writing 30 days prior to any proposed change in the hospice administrator, identifying the name of the new hospice administrator and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency.

(a) The hospice administrator must designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(b) The hospice administrator or designee shall be available during the agency's hours of operation.

(c) The hospice administrator is responsible to:

(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiii) secure contracts for services not directly provided by the hospice;

(xiv) implement a program of budgeting and accounting;

(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and

(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-302.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

R432-750-9. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the Department.

(3) The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract; and

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The agency shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) A patient will be accepted for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The agency shall base the acceptance determination on the following:

(a) The patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the agency shall complete an evaluation to determine the patient's eligibility for service.

(b) The patient's attending physician must order hospice care.

(c) The hospice agency determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The agency may terminate services to a patient if any of the following circumstances occur:

(a) The patient is determined to no longer be terminal.

(b) The family situation changes which affects the delivery of services.

(c) The patient or family is uncooperative in efforts to attain treatment objectives.

(d) The patient moves from the geographic area served by the agency.

(e) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(f) The agency can no longer provide quality care in the existing environment due to safety of staff, patient, or family.

(g) The patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) The agency shall establish and make available to the patient written patients' rights.

(a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.

(b) Agency policy may determine how patients' rights information is distributed.

(2) The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible and to receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, and to be afforded the opportunity to participate in the

planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive information about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses; and

(k) to receive information about advanced directives.

R432-750-12. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The hospice shall maintain an accurate, up-to-date record for every patient receiving service.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries must be dated and authenticated with the signature and title of the person making the entry.

(f) The hospice must document services provided and outcomes of these services in the individual patient record.

(2) Physician's orders shall be incorporated into the plan of care and renewed at least every 90 days.

(a) The orders shall include the physician signature and date.

(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.

(3) Each patient's record shall contain at least the following information:

(a) demographic information including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment which includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided.

(4) The hospice must send a copy of the summary required in subsection 12(3)(g)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.

(5) The person who is assigned to supervise or coordinate care for a patient must complete a discharge summary when services to the patient are terminated. The summary shall include:

(a) the reason for discharge; and

(b) the name of the facility or agency if the patient has been referred or transferred.

(6) The hospice shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) When a patient is transferred to another facility or agency, a copy of the record or abstract must be sent to that service agency.

(7) The agency shall provide an accessible area for filing and safe storage of medical records.

(a) Patient records shall be retained for at least seven years after the last date of patient care.

(b) Upon change of ownership, all patient records shall be transferred to new owners.

R432-750-13. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the agency at least annually to determine if the agency has met the agency objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained in the agency for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-14. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. Written policies and procedures shall include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) providing for and documenting that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services; and

(g) coordination of care plan between in-home hospice and

inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient must be signed by the attending physician and include the following:

(a) the name of patient;

(b) all pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date plan was initiated and dates of subsequent reviews.

(5) No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(b) Telephone orders must be received by licensed personnel and recorded immediately in the patient's medical record. Telephone orders must be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(d) The attending physician shall review, sign and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, must be administered as prescribed and recorded in the patients record.

R432-750-15. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician.

(2) The physician shall provide the following:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal condition.

(3) The administrator shall appoint in writing a licensed physician to be the medical director. The Medical Director must be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training, experience and interest. The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician is unable to retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-16. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly or by contract skilled nursing care;

(e) assign, supervise and teach other nursing personnel and primary care person;

(f) coordinate all services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-17. Medical Social Work Services.

(1) The agency shall provide social work services by a qualified social worker who has received a degree from an accredited school of Social Work.

(2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).

(3) The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-18. Professional Counseling Services.

(1) The agency shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients' and families' needs.

(2) Individuals who provide counseling services, whether employed or contracted by the agency, must be licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-19. Pastoral Care Services.

(1) The hospice shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) Pastoral services shall include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of clergy or spiritual counselors in the community as appropriate; and

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-20. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Volunteers must receive a minimum of 12 hours of documented orientation and training which shall include the following:

(a) the hospice services, goals, and philosophy of care;

(b) the physiological aspects of terminal disease;

(c) family dynamics, coping mechanisms and psychosocial and spiritual issues surrounding the terminal disease, death and bereavement;

(d) communication skills;

(e) concepts of death and dying;

(f) care and comfort measures;

(g) confidentiality;

(h) patient's and family's rights;

(i) procedures to be followed in an emergency;

(j) procedures to follow at time of patient death;

(k) infection control and safety;

(l) stress management; and

(m) the volunteer's role and documentation requirements.

(3) The hospice shall maintain records of hours of services and activities provided by volunteers.

(4) The agency shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-21. Bereavement Services.

(1) Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Bereavement services shall be supervised by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services.

(3) All volunteers and staff who deliver bereavement services shall receive bereavement training.

(4) Bereavement services shall include the following:

(a) survivor contact, as needed and documented, following a patient's death;

(b) an interchange of information between the team members regarding bereavement activities; and

(c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-22. Other Services.

(1) Other services may include but are not limited to:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy; and

(d) certified nursing aide.

(2) Services provided directly or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-23. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding inpatient hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12, depending on facility size and type of patient admitted.

R432-750-24. Hospice Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, inpatient hospice facilities shall meet the requirements of R432-750-25 through R432-750-40.

R432-750-25. Inpatient Staffing Requirements.

(1) The inpatient hospice must provide competent hospice trained nursing staff 24 hours per day, every day of the week to meet the needs of the patient in accordance with the patient's plan of care. Nursing services must provide treatments, medications, and diet as prescribed.

(2) A hospice-trained registered nurse must be on duty 24 hours per day to provide direct patient care and supervision of all nursing services.

R432-750-26. Inpatient Hospice Infection Control.

(1) The hospice shall develop and implement an infection control program to protect patients, family and personnel from hospice or community associated infections.

(2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.

(3) All employees shall wear clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.

(4) The hospice shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.

(5) The hospice shall comply with OSHA Blood Borne Pathogen Standards, 29 CFR 1910.1030, July 1, 1998, which is adopted and incorporated by reference.

R432-750-27. Pharmaceutical Services.

(1) The hospice shall establish and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include, but not be limited to the following:

(a) advise the hospice and hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;

(b) inspect all drug storage areas at least monthly; and

(c) conduct patient drug regiment reviews at least monthly or more often if necessary, with recommendations to physicians and hospice staff.

(3) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(4) The pharmaceutical service must ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The hospice must provide secure storage for medications. Medications that require refrigeration must be maintained between 36 and 46 degrees F.

(6) The hospice must provide separately locked compartments for storage of controlled drugs as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as well as other drugs subject to abuse. Only authorized personnel, in accordance with State and Federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice must maintain written documentation of the disposal.

(8) An inpatient hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit monthly, or more often as necessary.

R432-750-28. Inpatient Hospice Patient's Rights.

(1) In addition to R432-750-11, the hospice shall honor each patient's rights as follows:

(a) the right to exercise his/her rights as a patient of the facility and as a citizen or resident of the United States;

(b) the right to be free of mental and physical abuse;

(c) the right to be free of chemical and physical restraints for the purpose of discipline or staff convenience;

(d) the right to have family members remain with the patient through the night;

(e) the right to receive visitors at any hour, including small children;

(f) the right for the family to have privacy after a patient's death;

(g) the right to keep personal possessions and clothing as space permits;

(h) the right to privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) the right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(j) the right to have family or responsible person informed by the hospice of significant changes in the patient's condition or needs;

(k) the right to participate in religious and social activities of the patient's choice;

(l) the right to manage and control personal cash resources;

(m) the right to receive palliative treatment rather than

treatment aimed at intervention for the purpose of cure or prolongation of life;

(n) the right to refuse nutrition, fluids, medications and treatments; and

(o) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night; except that the hospice may lock doors at night for the protection of patients.

(2) The hospice must post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition must comply with the requirements of R432-150-14.

R432-750-29. Report of Death.

(1) The hospice shall have a written plan to follow at the time of a of patient's death. The plan shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of attending physician responsible for signing death certificate;

(d) notification of next of kin or legal guardian;

(e) authorization and release of the body to the funeral home;

(2) The hospice must notify the Department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-30. First Aid.

(1) The hospice shall ensure that at least one staff person is on duty at all times who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver and emergency procedures.

(2) First aid training refers to any basic first aid course approved by the American Red Cross, Utah Emergency Medical Training Council, or any course approved by the department.

(3) Each hospice, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) Each hospice shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-31. Safeguards for Patients' Monies and Valuables.

(1) The hospice must safeguard patients' cash resources, personal property, and valuables which have been entrusted to the licensee or hospice staff.

(2) A hospice is not required to handle patient's cash resources or valuables. However, if the hospice accepts a patient's cash resources or valuables, then the hospice must safeguard the patient's cash resources in accordance with the following:

(a) No licensee or hospice staff member may use patients' monies or valuables as his own or mingle them with his own. Patients' monies and valuables shall be separated, and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The licensee must maintain accurate records of patients' monies and valuables entrusted to the licensee.

(c) Records of patients' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of patients' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received.

(f) All money entrusted with the facility in a patient account in excess of $150 must be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each inpatient hospice must maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, which have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-32. Emergency and Disaster.

(1) The hospice is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and patients to assure prompt and efficient implementation.

(c) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The hospices's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the patients' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the hospice during an emergency;

(j) delivery of essential care and services to hospice occupants when personnel are reduced by an emergency; and

(k) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating must have the approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of

the patients in the hospice. The person in charge shall take immediate action in the best interests of the patients.

(iii) The hospice shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The hospice shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document all drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The hospice shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The hospice must post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

R432-750-33. Food Service.

(1) The hospice may provide dietary services directly, or through a written agreement with a food service provider.

(2) The hospice food service shall comply with the R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The hospice must maintain for Department review all inspection reports by the local health department.

(4) If the hospice accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The hospice must employ or contract with a certified dietician to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The hospice must ensure that sufficient food service personnel are on duty to meet the needs of patients.

(8) While performing food service duties, the cook and other kitchen staff shall not perform concurrent duties outside the food service area.

(9) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-750-34. Nutrition and Menu Planning.

(1) The hospice shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The hospice must have between meal snacks of nourishing quality available on a 24 hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The hospice shall ensure that patients' favorite foods are included in their diets whenever possible.

(6) The hospice shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) All food shall be of good quality, palatable, and attractively served.

R432-750-35. Pets in the Facility.

(1) A hospice may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) Pets must be clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets shall be kept in appropriate enclosures.

(5) Pets that are not confined shall be under leash control, or voice control.

(6) Pets that are kept at the facility shall have documented current vaccinations.

(7) Upon approval of the administrator, family members may bring patients' pets to visit. Visiting pets must have current vaccinations.

(8) Hospices with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling of droppings and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in food preparation, storage or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-36. Laundry Services.

(1) The hospice must provide laundry services to meet the needs of the patients.

(2) If the hospice contracts for laundry services, the hospice must obtain a signed, dated agreement from the contracted laundry service that details all services provided. The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).

(3) Each hospice that provides in-house laundry services must meet the following requirements:

(a) The hospice must maintain a supply of clean linen to meet the needs of the patients.

(b) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(c) Soiled linen and clothing shall be stored separate from clean linen and not allowed to accumulate in the facility.

(d) Laundry equipment shall be in good repair.

(e) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(f) Personnel shall handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-37. Maintenance Services.

(1) The hospice shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The hospice shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition with regard to ice, snow, and other hazards.

R432-750-38. Waste Storage and Disposal.

The hospice must provide facilities and equipment for the sanitary storage and treatment or disposal of all categories of

waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-750-39. Water Supply.

(1) Hot water provided to patient tubs, showers, whirlpools, and hand washing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.

(2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperatures.

R432-750-40. Housekeeping Services.

(1) The hospice must provide housekeeping services to maintain a clean, sanitary, and healthful environment.

(2) If the hospice contracts for housekeeping services with an outside entity, the hospice must obtain a signed and dated agreement that details the services provided.

(3) The hospice must provide safe, secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients, cleaners and chemicals must be locked in a secure area to prevent unauthorized access.

(4) Personnel engaged in housekeeping or laundry services may not be concurrently engaged in food service or patient care.

(5) The hospice must establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-41. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities
October 1, 2011 26-21-5
Notice of Continuation March 28, 2012 26-21-6

R432. Health, Family Health and Preparedness, Licensing.
R432-950. Mammography Quality Assurance.
R432-950-1. Authority.

This rule is adopted pursuant to Section 26-21a-203.

R432-950-2. Compliance.

Facilities shall be in full compliance with R432-950 and 42 U.S.C. 263b, the Mammography Quality Standards Act of 1992.

R432-950-3. Definitions.

(1) "Diagnostic mammography" means performing a mammogram on a woman suspected of having breast cancer.

(2) "Facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis, including any or all of the following: operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation.

(3) "Image quality" means the overall clarity and detail of an x-ray including spatial resolution or resolving power, sharpness, and contrast.

(4) "Mammogram" means a radiographic image of the breast.

(5) "Mammogram unit" means an x-ray system designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression, and low dose exposure that can produce reproducible images of high quality.

(6) "Mammography" means radiography of the breast to diagnose breast cancer.

(7) "Phantom" means an artificial test object simulating the average composition of, and various structures within, the breast.

(8) "Screening mammography" means a standard readable two-view per breast low dose radiographic examination to detect unsuspected breast cancer using specifically designed equipment dedicated for mammography.

(9) "Quality assurance" means a program designed to achieve the desired degree or grade of care including evaluation and educational components to identify and correct problems in interpreting and obtaining mammogram.

(10) "Quality control" means the process of testing and maintaining the highest possible standards of equipment performance and acquisition of radiographic images.

R432-950-4. Facility Quality Assurance.

(1) The facility shall conduct a quality assurance program to assure the operation and the services provided are in accordance with R432-950.

(2) The facility shall correct identified deficiencies to produce desired results.

(3) The facility shall evaluate the corrections required for a systems change to update the quality assurance plan.

R432-950-5. Compliance with State and Local Rules.

(1) A supplier of mammography services shall comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and mammography services.

(2) The facility shall maintain documentation showing that it complies with all applicable state and local laws and rules pertaining to radiological and mammography services. This includes the following:

(a) Certification of the facility;

(b) Licensure or certification of the personnel;

(c) Documentation that the facility has been approved by the American College of Radiology (ACR).

R432-950-6. Facility Oversight.

(1) The facility is responsible for the overall quality of the mammography conducted.

(2) The facility shall have available, either on staff or through arrangement, sufficient qualified staff to meet patients' needs relating to mammography. Sufficient staff includes the following:

(a) A designated physician supervisor who meets the requirements for qualified physicians specified by the Utah Department of Commerce;

(b) A medical physicist who is certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or who meets the requirements specified by the Department of Environmental Quality;

(c) One or more radiologic technologists who meet the requirements specified by the Utah Department of Commerce pursuant to Section 26-21a-203.

R432-950-7. Physician, Physicist and Radiologic Technologist Standards.

(1) A physician interpreting mammograms or supervising mammography, or both, shall provide documentation to the Department upon request showing he meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act. A qualified physician shall interpret the results of all mammograms. Diagnostic mammography shall be done under the direct on-site supervision of a qualified physician.

(2) A radiologic technologist shall meet the following requirements and the facility shall provide documentation to the Department upon request showing the radiologic technologist:

(a) Meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act;

(b) Obtains on-the-job training in mammography under the supervision of a qualified physician, or the supervising radiologic technologist, or both;

(c) Is competent in breast positioning and compression as determined from critiques by a qualified physician of mammogram films taken by the radiologic technologist;

(d) Is knowledgeable in facility policies concerning technical factors, radiation safety, radiation protection, and quality control as evaluated by the radiologic technologist's supervisor;

(e) Receives continuous supervision and feedback on image quality from the interpreting or supervising physician.

(3) A medical physicist must:

(a) be certified in an acceptable specialty by one of the bodies approved by the FDA to certify medical physicists;

(b) be licensed or approved by a State to conduct evaluations of mammography equipment as required by State law; or

(c) for those medical physicists associated with facilities that apply for accreditation before October 27, 1997, who meet training and experience requirements of Mammography Quality Standards Act and its implementing regulations.

R432-950-8. Personnel Requirements.

(1) The facility shall document that new staff orientation and ongoing in-service training is based on current written facility policies and procedures.

(2) Personnel shall have access to the facility's written policies and procedures when on duty.

(3) The facility shall implement a standardized orientation program for each employment position including the time for completing training.

(4) A written in-service training program shall identify the topics and frequency of training including an annual review of facility policies and procedures.

(5) The facility shall maintain personnel records documenting that each employee is qualified and competent to

perform respective duties and responsibilities by means of appropriate licensure or certification, experience, orientation, ongoing in-service training, and continuing education.

(6) The facility shall retain personnel records for terminated employees for a minimum of four years following the final date of termination.

R432-950-9. Equipment Standards.

(1) Mammogram units shall be designed specifically for mammography and shall have a compression device and the capability for placement of a grid.

(2) The facility shall maintain current written policies and procedures for operating equipment.

(3) Prior to initiating operation of a mammogram unit it shall be registered with the Utah Department of Environmental Quality.

R432-950-10. Safety Standards.

(1) The facility shall maintain documentation that the mammogram unit is safe and that proper radiation safety practices are being followed.

(2) The facility shall maintain documentation that employees have been trained on safety standards for radiation.

(3) The facility shall maintain procedure manuals and logs for equipment quality control.

(4) The facility shall maintain documentation that the quality control program complies with ACR quality control manuals for mammography or the equivalent.

(a) Equivalent programs shall include a quality control program for equipment, mammogram unit performance, and film processors, approved by the Utah Department of Environmental Quality.

(b) Equivalent programs shall contain stated objectives achieved by procedures comparable to objectives and procedures in the American College of Radiology Quality Control Manuals for Mammography.

(5) Accreditation by the American College of Radiology Mammography Program documents compliance with mammogram unit quality control requirements in R432-950-10(1).

R432-950-11. Technical Specifications for Mammography.

(1) The facility shall have available a phantom for use in the facility's ongoing quality control program.

(2) The facility shall evaluate image quality at least monthly using a phantom that produces measurements satisfactory to the supervising physician.

(3) The facility's evaluation of clinical images shall include the following:

(a) Positioning;
(b) Compression;
(c) Exposure level;
(d) Resolution;
(e) Contrast;
(f) Noise;
(g) Exam Identification;
(h) Artifacts.

R432-950-12. Physician Supervisor Responsibility.

(1) A physician supervisor is responsible for general oversight of the quality control program of the facility. Oversight responsibilities include:

(a) Annual review of the policy and procedure manual;

(b) Verification that the equipment and facility personnel meet applicable federal, state and local licensure and registration requirements;

(c) Verification that equipment is performing properly;

(d) Verification that safe operating procedures are used to protect facility personnel and patients;

(e) Verification that all other requirements of R432-950 are being met.

(2) The physician shall document annually that he provides oversight for the quality control of the mammography service.

R432-950-13. Mammography Records.

(1) A medical record shall be maintained for each patient on whom screening or diagnostic mammography is performed.

(a) Provision shall be made for the filing, safe storage and accessibility of medical records.

(b) Records shall be protected against loss, defacement, tampering, fires, and floods.

(c) Records shall be protected against access by unauthorized individuals.

(d) All records shall be readily available upon the request of:

(i) The attending physician,

(ii) Authorized representatives of the Department for determining compliance with licensure rules;

(iii) Any other person authorized by written consent.

(e) The facility shall establish a system to assure that the patient's mammogram is accessible for clinical follow-up when requested.

(i) A copy of the mammogram and other appropriate information shall be sent to the requesting party responsible for subsequent medical care of the patient no later that 14 working days from the request for information.

(ii) Medical information may be released only upon the written consent of the patient of her legal representative.

(2) The facility shall attempt to obtain a prior mammogram for each patient if the prior mammogram is necessary for the physician to properly interpret the current exam.

(3) The interpreting physician shall prepare and sign a written report of his interpretation of the results of the screening mammogram.

(a) The written report shall include a description of detected abnormalities and recommendations for subsequent follow-up studies.

(b) The interpreting physician shall render the report as soon as reasonably possible.

(c) The interpreting physician or his designee shall document and communicate the results of the report to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(d) The interpreting physician or his designee shall notify self-referred patients, that is, patients who have no referring physician, of the results of the screening study in writing and in lay language.

(4) The interpreting physician or his designee shall document and communicate the results of all diagnostic reports in the high probability category with suspicion of breast cancer to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(5) The physician shall document and communicate in person in lay language, by certified mail, or in such a manner that receipt of the diagnostic report is assured to all self-referred patients within the high probability category with a suspicion of breast cancer. The report shall indicate whether the patient needs to consult with a physician.

(a) The interpreting physician or his designee shall attempt to make a follow-up contact with the patient to determine whether she has consulted a physician for follow-up care.

(b) The interpreting physician or his designee shall document in the patient's medical record attempts to communicate the results to the patient.

(6) The facility shall retain the original and subsequent

mammograms for a period of at least five years from the date of the procedure.

R432-950-14. Education.

(1) A patient has the right to be treated with dignity and afforded privacy during the examination.

(2) The facility shall establish an education system to ensure that the patient understands:

(a) The purpose of the mammogram and how it is used to screen for breast cancer;

(b) The process required to obtain the mammogram;

(c) The importance of the screening mammography to her ongoing health.

R432-950-15. Collecting and Reporting Data.

(1) The facility shall establish a system for collecting and periodic reporting of mammography examinations and clinical follow-up as provided below:

(a) Clinical follow-up data shall include the follow-up on the disposition of positive mammographic findings, and the correlation of the surgical biopsy results with mammogram reports.

(b) The facility shall maintain records correlating the positive mammographic findings to biopsies done and the number of cancers detected.

(c) The facility shall report the results of the outcomes annually to the Department or its designated agent, on forms furnished by the Department. The report shall include as a minimum:

(i) The number of individuals receiving screening mammograms;

(ii) Total number of patients recommended for biopsy based on a screening mammogram;

(iii) Total number of patients diagnosed with breast cancer based on a screening mammogram;

(iv) The number and names of individuals with positive mammographic findings lost to follow-up.

(2) The Department or its designated agent shall provide each reporting facility, on a schedule determined by the Department, summary statistical reports which permit each facility to compare its results to statewide and other comparative statistics.

R432-950-16. State Certification.

(1) No facility, person or governmental unit acting severally or jointly with any other person, may establish, conduct or maintain a mammography unit without first obtaining a state certificate from the Department.

(2) An applicant for state certification shall file a Request for Agency Action/Certification Application with the Utah Department of Health on forms furnished by the Department.

(3) Each facility shall comply with all zoning, building and licensing laws, rules and ordinances and codes of the city and county in which the facility is located. The applicant shall submit the following to the Department:

(a) Verification of participation and quality control by the American College of Radiology for monitoring mammography services in the facility;

(b) Verification of licensure or certification of required personnel;

(c) Fees established by the Utah State Legislature pursuant to Section 63-38-3.

(4) The Department shall render a decision on the initial certification within 60 days of receipt of a completed application packet or within 6 months of date that the first component of an application packet was received.

(a) Upon verification of compliance with state certification requirements, the Department shall issue a provisional certificate.

(b) The Department shall issue a notice of agency decision under the procedures for informal adjudicative proceedings denying a state certification if the applicant is not in compliance with the applicable laws or rules. The notice shall state the reasons for denial.

(5) Certificate Contents and Provisions. The state certificate shall include the name of the mammography facility, owner, supervising physician, address, issue and expiration dates of the state certificate and the certificate number.

(b) The state certificate may be issued only to the owner and for the premises described in the application and shall not be assignable or transferable.

(c) Each state certificate is the property of the Department and shall be returned within five days if the certification is suspended, revoked, or if the operation of the facility is discontinued.

(d) The state certificate shall be prominently displayed where it can be easily viewed by the public.

(6) Certification periods shall be for 24 months, and expire at midnight 24 months from the date of issuance.

(a) A request for renewal and applicable fees shall be filed with the Department 15 days before the state certificate expires.

(b) Failure to make a timely renewal shall result in assessment of late fees as established by the Utah State Legislature pursuant to Section 26-21a-203.

(7) The owner shall submit a Request for Agency Action/Application to amend or modify state certification status at least 30-days before any of the following proposed or anticipated changes occur:

(a) Change in the name of the facility;

(b) Change in the supervising physician;

(c) Change in the owner of the facility.

(8) The owner who wants to cease operation shall complete the following:

(a) Notify the patients within 30 days before the effective date of closure.

(b) Make adequate provision for the safekeeping of records and notify the department where those records will be stored.

(c) Return the state certificate to the Department within five days after the facility ceases operation.

(9) The Department may issue a provisional state certificate to a facility as an initial certification and may issue a provisional state certification to a facility that does not fully comply with the requirements for a standard certification but has made acceptable progress towards meeting the requirements.

(a) In granting a provisional state certification, the Department must be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(b) A provisional state certificate is nonrenewable and shall be issued for no more than 6 months.

R432-950-17. Inspections.

Upon presentation of proper identification, authorized representatives of the Department shall be allowed to enter a facility at any reasonable time without a warrant and be permitted to review records including medical records, when it is determined by the Department to be necessary to ascertain compliance with state law and rules promulgated under Section 26-21a-205.

(1) Each facility may be inspected by the Department or its designee to determine compliance with minimum standards and the applicable rules.

(2) Upon receipt of the survey results of the ACR, the facility shall submit copies of the certificate and the survey report and recommendations.

(3) The accreditation documents are open to the public.

(4) The Department may conduct periodic validation inspections of facilities accredited by the ACR for the purpose

of determining compliance with state requirements.

R432-950-18. Enforcement and Appeal Process.

Whenever the Department has reason to believe that the facility is in violation of Section 26-21a-203 or any of the rules adopted pursuant to Title 26, Chapter 21, the Department shall issue a written Statement of Findings/Plan of Correction to the certified facility.

KEY: health care facilities, mammography
June 2, 2010 26-21a-203
Notice of Continuation March 28, 2012

R512. Human Services, Child and Family Services.
R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living.
R512-2-1. Purpose and Authority.

(1) The purpose of this rule is to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

(2) This rule is authorized by Section 62A-4a-102.

R512-2-2. Child Welfare/Family Preservation and Support Services.

(1) The Division of Child and Family Services (Child and Family Services) adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

(a) 42 USC 620, 621, 622, 623, 624, 625, 626, 629, 629a, 629b, 629c, 629d, 629e as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Parts 1355 and 1357 as updated through October 1, 2009, incorporated by reference.

R512-2-3. Title IV-E Foster Care, Adoption, and Independent Living.

(1) Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

(a) 42 USC 670, 671, 672, 673, 674, 675, 676, 677, and 679, as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Part 1356, as updated through October 1, 2009, incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility
September 15, 2010 62A-4a-102
Notice of Continuation March 5, 2012 62A-4a-105

R512. Human Services, Child and Family Services.
R512-31. Foster Parent Due Process.
R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-2. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-3. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home if the foster parent disagrees with the decision, unless the removal is for the purpose of:

(a) Returning the child to the child's natural parent or legal guardian.

(b) Immediately placing the child in an approved adoptive home.

(c) Placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a).

(d) Placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C., Section 1915.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication and by Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the foster parent conflict resolution procedure, and notice regarding the ability of the foster parent to petition the juvenile court judge currently assigned to the case if the child has been in the foster home for 12 months or longer in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the regional director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services, the foster parent shall have the opportunity to request a review, to be held before removal of the child, by a third party neutral fact finder. If the child has been placed with the foster parents for a period of at least two years, the foster parent may request a review to be held before removal of the child, by:

(i) The juvenile court judge currently assigned to the child's case, or

(ii) If the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(d) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Subsection 62A-4a-206(2)(b)(ii).

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The Administrative Law Judge shall determine if Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the

Office of Administrative Hearings as required by Subsection 62A-4a-206(2)(c).

KEY: child welfare, foster care, due process

August 11, 2010	**62A-41-102**
Notice of Continuation March 5, 2012	**62A-4a-105**
	62A-4a-206
	63G-4-201
	78A-6-318

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for confidentiality and testing of children with reportable communicable diseases.

(2) This rule is authorized by Section 62A-4a-102.

R512-32-2. Definitions.

(1) "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

(2) "Primary care medical provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services (Child and Family Services). (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(3) "UDHS" means the Utah Department of Human Services.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of Communicable Disease Control.

(6) "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

(7) "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

(8) "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

(9) "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

(10) "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

(11) "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63G-2-304.

R512-32-3. Confidentiality.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: Child and Family Services administrators, program administrators, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

(2) Due to the GRAMA and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/Assessment" section of the case record.

R512-32-4. Identification and Testing of Children with Communicable Disease.

(1) Testing at Agency's Request.

(a) Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of Child and Family Services. When Child and Family Services has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

(b) If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

(c) If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(8), a child who may be at risk as defined in R512-32-1(9), or medical information received by the caseworker, foster parent, or provider.

(e) Communicable disease testing requires written, informed consent. If Child and Family Services has custody and guardianship of a child, Child and Family Services has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of Child and Family Services refuses to be tested, the caseworker is required to contact UDOH, the local health department, and the Attorney General's office immediately upon hearing of the refusal.

(f) When a parent of a child in the custody of Child and Family Services is known or reports to be involved in high risk behaviors, the caseworker shall contact UDOH for consultation.

(g) All contacts with UDOH shall be documented in the child's case record and filed under the "Medical/Assessment" section of that record.

(2) Testing at Minor's Request.

(a) A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

(b) When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the Child and Family Services program administrator or deputy director.

R512-32-5. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering that a child has a communicable disease, the caseworker, in collaboration with the Fostering Healthy Children RN, will contact the Local Health Department (LHD) in their area for consultation to define the precautions necessary to mitigate any health risks to others. After consultation with the LHD and prior to placing the child, the caseworker shall hold a professional staffing, including the child's primary care

medical provider (as defined in R512-32-1, Definitions), to identify the best placement to meet the child's needs. Once a placement is identified, a Child and Family Team Meeting will be held to address the child's health issues and make sure the caregiver is willing to participate in maintaining the safety of all involved. Additional education and training will be provided as necessary.

R512-32-6. Considerations Regarding Placement of a Child With a Communicable Disease.

(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the "Medical/Assessment" section of that record.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(1) and R512-32-5(2) shall be accomplished without delay.

R512-32-7. Pick-Up Orders.

(1) Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in High Risk Behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-8. Returning a Minor to the Parent's Custody.

(1) If a minor in Child and Family Services custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

(2) If a minor in Child and Family Services custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-9. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

(1) When a minor in the custody of Child and Family Services is identified by UDOH as having been exposed to a person who has tested positive, UDOH shall contact the Child and Family Services program administrator or deputy director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The caseworker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
May 27, 2009 **62A-4a-102**
Notice of Continuation March 5, 2012 **62A-4a-105**
63G-2-304
26-6-3
26-6-18
26-6-27

R512. Human Services, Child and Family Services.
R512-40. Adoptive Home Studies, Recruitment, Approval.
R512-40-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for conducting adoptive home studies, recruitment of adoptive homes, and approval of adoptive homes.

(2) This rule is authorized by Section 62A-4a-102.

R512-40-2. Guidelines for Persons Applying for Adoptive Placement of a Child With Special Needs.

(1) Adoptive homes will be approved following the provisions of R501-7. In addition, the following factors will be considered:

(a) Adoptive applicants shall apply in the region where they reside.

(b) Both couples and single individuals may be approved as prospective adoptive parents based upon their ability to provide for children with special needs.

(c) Applicants shall show commitment and stability in existing family relationships which would provide a base for an adoptive child.

(d) The evaluation of the family shall include their strengths and weaknesses. Recommendations shall be made as to the age and type of child who can best fit into the home to ensure the healthy development of the child.

(e) Potential adoptive parents must arrange supervision for the child at times when they are not able to be in the home with the child. Supervision is to be in accordance to the child's age and developmental ability.

(f) A prospective adoptive parent may not be approved for the adoptive placement of a child in state custody unless the prospective adoptive parent and any adults living in the home have completed criminal background checks required by Section 78A-6-308 and P.L. 109-248.

(g) The following factors are critical in the success of adoptive placements and should be factors in approving adoptive applicants:

(i) Commitment to adoption,

(ii) Ability to sustain long-term relationship,

(iii) Proper motivation and realistic expectations,

(iv) Emotional openness and flexibility,

(v) Empathy,

(vi) Strong social support system and knowledge of resources, and

(vii) Stable marital relationship.

(h) The following factors may significantly contribute to adoption disruption and should be considered in approving adoptive applicants:

(i) History of emotional or psychological problem or substance abuse,

(ii) Impulse control disorders,

(iii) Disruptive crisis filled lifestyles,

(iv) Criminal activity,

(v) Serious problems in child rearing,

(vi) Unrealistic expectations of self and child, and

(vii) Marital difficulties and incompatibilities which seriously compromise the ability to meet the needs of the child.

R512-40-3. Follow-Up Services.

(1) A record of the approved home study shall be maintained in the Division of Child and Family Services (Child and Family Services) Management Information System.

(2) Any significant changes in the family's situation shall be documented by revisions or additions on an annual basis in the adoptive study, including revised medical reports, if needed.

(3) At the end of a family's third year as an approved prospective adoptive home, Child and Family Services shall notify the family that their home study will be closed unless the family reapplies for a new home study to be completed.

R512-40-4. Application by Staff of Child and Family Services.

(1) Staff members of Child and Family Services may apply to adopt and may adopt children in State custody in the following manner:

(a) The person applies in the region of residence.

(b) The home study will be completed by staff of another region on a cooperative basis upon the request of the regional director.

(c) Approval of placement of a child in a staff member's home will be by the region having custody of the child. If the prospective adoptive parent is from the same region as the child, the placing committee will consist of the child's caseworker, outside child welfare specialists, and the State Adoption Program Administrator. Supervision will be by the placing region, unless the child and prospective parent are from the same region, in which case, another region will provide supervision.

KEY: adoption

May 27, 2009	**62A-4a-102**
Notice of Continuation March 5, 2012	**62A-4a-106**
	78A-6-308
	Pub. L. 109-248

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102.

R512-42-2. Adoption by Relatives.

(1) A relative who has a relationship with a child available for adoption may apply to adopt a particular child. The application and home study will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with Section 78B-6-128, based upon the best interest of the child.

KEY: adoption

February 9, 2010	**62A-4a-102**
Notice of Continuation March 5, 2012	**78A-6-307**
	78B-6-102
	78B-6-117
	78B-6-128
	78B-6-137

R512. Human Services, Child and Family Services.
R512-80. Definitions of Abuse, Neglect, and Dependency.
R512-80-1. Purpose, Interpretation, and Authority.

(1) Purpose. Under Utah law, Child and Family Services is responsible for providing child welfare services and protecting children from abuse, neglect, and dependency. In determining what constitutes abuse, neglect, or dependency, the definitions in Sections 62A-4a-101, et. seq., Sections 78A-6-105, et. seq., the Criminal Code, these Administrative Rules, and court opinions shall apply. These definitions are intended to clarify those definitions or judicial opinions. Conduct that qualifies as abuse, neglect, or dependency under a criminal statute or the Judicial Code or under Child and Family Services' civil statutes (Sections 62A-4a-101, et. seq.), however, shall qualify as abuse, neglect, or dependency even if these definitions inadvertently fail to bring such conduct within the scope of a particular definition. Some criminal statutes recognize defenses to abuse, neglect, or dependency that may not be applicable in Child and Family Services' civil investigations of child abuse, neglect, or dependency.

(2) Interpretation. Child and Family Services' statutes and these definitions shall be interpreted broadly to protect children from abuse, neglect, or dependency. These definitions shall be applied and interpreted according to the following principles:

(a) These definitions supersede earlier definitions.

(b) In cases of ambiguity, the Child and Family Services' definition shall be construed to harmonize with the relevant statutory definitions (as interpreted by the courts) and to further Child and Family Services' statutory responsibility to protect children and act in the best interest of the child.

(3) Authority. This rule is authorized by Section 62A-4a-102.

R512-80-2. Definitions.

(1) "Abandonment" means conduct by either a parent or legal guardian showing a conscious disregard for parental obligations where that disregard leads to the destruction of the parent-child relationship, except in the case of the safe relinquishment of a newborn child pursuant to Section 62A-4a-802. Abandonment also includes conduct specified in Section 78A-6-508.

(2) "Abuse" is as defined in Section 78A-6-105. It includes but is not limited to child endangerment, Domestic Violence Related Child Abuse, emotional abuse, fetal exposure to alcohol or other harmful substances, dealing in material harmful to a child, Pediatric Condition Falsification or medical child abuse (formerly Munchhausen Syndrome by Proxy), physical abuse, sexual abuse, and sexual exploitation.

(3) "Child endangerment" means subjecting a child to threatened harm. This also includes conduct outlined in Sections 76-5-112 and 76-5-112.5.

(4) "Chronic abuse" is as defined in Section 62A-4a-101.

(5) "Chronic neglect" is as defined in Section 62A-4a-101.

(6) "Cohabitant" is as defined in Section 78B-7-102. (See Definitions in Administrative Rule R512-205.)

(7) "Custodian" means a person who has legal custody of a child or a person responsible for a child's care as defined in Section 62A-4a-402.

(8) "Dealing in material harmful to a child" means distributing (providing or transferring possession), exhibiting (showing), or allowing immediate access to material harmful to a child or any other conduct constituting an offense under Sections 76-10-1201 through 1206.

(9) "Dependency" is as defined in Section 62A-4a-101. Dependency includes safe relinquishment of a newborn child as provided in Section 62A-4a-802.

(10) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct. (See Definitions in Administrative Rule R512-205.)

(11) "Educational neglect" means failure or refusal to make a good faith effort to ensure that a child receives an appropriate education, after receiving notice that the child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner in accordance with Sections 78A-6-105 and 78A-6-319.

(12) "Emotional abuse" means engaging in conduct or threatening a child with conduct that causes or can reasonably be expected to cause the child emotional harm. This includes but is not limited to:

(a) Demeaning or derogatory remarks that affect or can reasonably be expected to affect a child's development of self and social competence; or

(b) Threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting.

(13) "Environmental neglect" means an environment that poses an unreasonable risk to the physical health or safety of a child.

(14) "Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect. Failure to protect includes the conduct of a non-abusive parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the abuse or neglect or the alleged perpetrator's identity.

(15) "Failure to thrive" means a medically diagnosed condition in which the child fails to develop physically. This condition is typically indicated by inadequate weight gain.

(16) "Fetal exposure to alcohol or other harmful substances" means a condition in which a child has been exposed to or is dependent upon harmful substances as a result of the mother's use of illegal substances or abuse of prescribed medications during pregnancy, or has fetal alcohol spectrum disorder.

(17) "Harm" is as defined in Section 78A-6-105. (See also the definition of "threatened harm".)

(18) "Material harmful to a child" means any visual, pictorial, audio, or written representation (in whatever form, including performance) that includes pornographic or sexually explicit material, including nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that:

(a) Taken as a whole, appeals to the prurient interest in sex of a child, and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a child, and

(c) Taken as a whole does not have serious value for a child. "Serious value" includes only serious literary, artistic, political, or scientific value for a child.

(19) "Medical neglect" means failure or refusal to provide proper or necessary medical, dental, or mental health care or to comply with the recommendations of a medical, dental, or mental health professional necessary to the child's health, safety, or well-being. Exceptions and limitations are as provided in Section 78A-6-105.

(20) "Molestation" is as defined in Section 78A-6-105.

(21) "Neglect" is as defined in Section 78A-6-105. It includes but is not limited to abandonment, educational neglect, environmental neglect, failure to protect, failure to thrive, medical neglect, non-supervision, physical neglect, and sibling at risk.

(22) "Non-supervision" means the child is subjected to accidental harm or an unreasonable risk of accidental harm due to failure to supervise the child's activities at a level consistent with the child's age and maturity.

(23) "Pediatric Condition Falsification" (formerly Munchausen Syndrome by Proxy) means a cluster of symptoms or signs, circumstantially related, in which the parent or

guardian misrepresents information and/or simulates or produces illness in a child, has knowledge about the etiology of the child's illness but denies such knowledge, seeks multiple medical procedures, or acute symptoms and signs of the illness cease when the child is separated from the parent or guardian.

(24) "Perpetrator" means a person substantially responsible for causing child abuse or neglect, or a person responsible for a child's care who permits another to abuse or neglect a child. (See also Section 76-5-109.)

(25) "Physical abuse" means non-accidental physical harm or threatened physical harm of a child that may or may not be visible. It includes unexplained physical harm of an infant, toddler, disabled, or non-verbal child. "Physical harm" includes but is not limited to "physical injury" and "serious physical injury" as defined in Section 76-5-109.

(26) "Physical neglect" means failure to provide for a child's basic needs of food, clothing, shelter, or other care necessary for the child's health, safety, morals, or well-being.

(27) "Serious harm" includes but is not limited to "serious physical injury" as defined in Section 76-5-109.

(28) "Severe abuse" is as defined in Section 78A-6-105.

(29) "Severe neglect" is as defined as in 78A-6-105.

(30) "Sexual abuse" is as defined in Section 78A-6-105. Sexual abuse also includes forcing a child under 18 years of age into marriage or cohabitation with an adult in an intimate relationship.

(31) "Sexual exploitation" is as defined in Section 78A-6-105.

(32) "Sibling at risk" means a child who is at risk of being abused or neglected because another child in the same home or with the same caregiver has been or is abused or neglected.

(33) "Threatened harm" means any conduct that subjects a child to unreasonable risk of harm or any condition or situation likely to cause harm to a child. (See definition of "harm".)

KEY: child welfare
March 15, 2012 **62A-4a-102**

R523. Human Services, Substance Abuse and Mental Health.
R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.
R523-23-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

(a) certification of providers;

(b) approval of the Seminar curriculum;

(c) the ongoing activities of providers; and

(d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

R523-23-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-23-6. Division Responsibilities.

The Division shall maintain the database of servers who have completed the seminar.

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the

Division. This curriculum must provide at least three hours of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

(i) facts about alcohol;

(ii) what alcohol is; and

(iii) alcohol's path through the body.

(b) Factors influencing the effect of alcohol including:

(i) food and digestive factors;

(ii) weight, physical fitness and gender factors;

(iii) psychological factors;

(iv) tolerance; and

(v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

(ii) classification of behavioral signs; and

(iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

(i) use of classification system;

(ii) use of alcohol facts;

(iii) continuity of service; and

(iv) drink counting.

(e) Overview of state alcohol laws:

(i) Utah liquor distribution and control;

(ii) legal age;

(iii) prohibited sales;

(iv) third party liability and the Dram Shop Law;

(v) legal definition of intoxication; and

(vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

(g) Intervention techniques:

(i) slowing down service;

(ii) offering food or nonalcoholic beverages;

(iii) serving water with drinks;

(iv) not encouraging reorders; and

(v) cutting off service.

(h) Establishing house rules for regulating alcoholic beverages:

(i) management and co-workers' support; and

(ii) dealing with minors; and

(i) Alternative means of transportation and getting the customer home safely:

(i) ask customer to arrange alternative transportation;

(ii) call a taxi or transportation service;

(iii) accommodations for the night; and

(iv) telephone the police.

R523-23-8. Examination.

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-23-10. Grounds for Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-23-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the

action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training, on-premise
March 9, 2012 62A-15-105(5)
Notice of Continuation June 22, 2007 62A-15-401

R523. Human Services, Substance Abuse and Mental Health.
R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off premise consumption in the scope of the person's employment with a general food store or similar business.

(3) These rules include:

(a) curriculum content standards,

(b) seminar provider standards,

(c) provider certification process;

(d) the ongoing activities of providers, and

(e) the process for approval, denial, suspension and revocation of provider certification.

R523-24-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off premise consumption.

R523-24-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-24-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) Provide technical support, such as a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) Issue a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) Track the internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) Provide an individual who takes an online course or test the opportunity to use an e-signature; or

R523-24-5. Retail Employee Responsibilities.

(1) A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

R523-24-6. Division Responsibilities.

The Division shall maintain the database of retail employees who have completed the Seminar and make this information available to the public.

R523-24-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes

of instruction both for original certification and for any and all re-certifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) statistics identifying the underage drinking problem, which information provided by the Division;

(e) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and intoxicated persons;

(f) strategies commonly used by minors to gain access to alcohol;

(g) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(h) policies and procedures to prevent beer purchases by intoxicated individuals;

(i) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(j) recognition of beverages containing alcohol including examples of such beverages.

R523-24-8. Examination.

The examination shall include questions from each of the curriculum components identified in Section R523-24-7. The examination will be submitted for approval with the rest of the provider application.

R523-24-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) identifies all program instructors and instructor trainers and certifies in writing that they:

(i) have been trained to present the course material, and

(ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;

(b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;

(c) Allow the Division to audit all online courses or tests at any time the Division requests;

(d) agrees to invalidate a course completion certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test;

(e) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-24-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked and has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

R523-24-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-24-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to address areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-24-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director, or the Director's designee, within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: off-premises, training, seminars, alcohol
March 9, 2012 62A-15-105(5)
Notice of Continuation July 13, 2011 62A-15-401

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to outline the services that the Office of Recovery Services/Child Support Services (ORS/CSS) will provide to all Non-IV-A Recipients of child support services.

R527-34-2. Non-IV-A Services.

1. ORS/CSS will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if:

i. income withholding is already in effect; and,

ii. the child(ren) still resides with the obligee;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33 (2010) which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support
March 27, 2012 62A-11-107
Notice of Continuation November 17, 2011 45 CFR 302.33

R527. Human Services, Recovery Services.
R527-35. Non-IV-A Fee Schedule.
R527-35-1. Authority and Purpose.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

2. The purpose of this rule is to provide information regarding the ORS/CSS fee schedule for Non-IV-A cases which is authorized by Federal Regulations found at 45 CFR 302.33. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

R527-35-2. Non-IV-A Fee Schedule.

Pursuant to 45 CFR 302.33 (2010) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of $122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20.00. This fee is waived if the case was closed within the last 12 months for the reason CTF (cannot find the non-custodial parent) or AFC (non-custodial parent lives in a foreign jurisdication);

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. an administrative fee of $5.00 per payment processed, not to exceed $10.00 per month;

4. a fee of $25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is $50.00 or more. If the refund is more than $25.00 but less than $50.00, the fee is the refund amount minus $25.00;

5. the Child Support Lien Network (CSLN) fee of $52.00, to be paid at the time the levy is processed.

KEY: child support
March 27, 2012 45 CFR 302.33
Notice of Continuation November 17, 2011 62A-11-107

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for providing medical support services.

R527-201-2. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008) which are incorporated by reference in this rule.

R527-201-3. Definitions.

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2.National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

R527-201-4. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

a. order either parent to purchase and maintain appropriate medical insurance for the children, and

b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Insurance Credit.

1. If an obligated parent is required to provide health insurance for his or her minor child(ren) and the order was issued by a Utah tribunal, in accordance with U.C.A. 78B-12-212, the parent may receive an insurance credit. ORS/CSS will calculate and apply the insurance credit if the office receives a completed Insurance Premium Credit Request letter. The Insurance Premium Credit Request must include the following information:

a. availability of insurance;
b. policy number;
c. names of all individuals covered by the policy;
d. the out-of-pocket cost for the insurance;
e. proof of the monthly insurance premium paid;
f. the obligated parent's signature; and,
g. the date the letter was completed.

2. Credit will be given to the obligated parent beginning the first day of the month following the date ORS/CSS receives the completed Insurance Premium Credit Request letter.

3. The insurance credit will be ended each calendar year, January 2, in accordance with U.C.A. 78B-12-212 (7), unless the obligated parent provides verification of coverage and costs to ORS/CSS on an updated Insurance Premium Credit Request. To allow sufficient time for ORS to process the annual insurance verification, the obligated parent may provide verification of the coverage as early as November 1 of the previous year.

R527-201-9. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance

with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

a. notify ORS/CSS within five days after the obligated parent terminates employment;

b. provide the office with the obligated parent's last-known address; and

c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11. Coordination of Health Insurance Benefits.

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

R527-201-12. Obligated Parent Receiving Medicaid.

In an unestablished paternity case, if the alleged father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

March 27, 2012 **30-3-5**
Notice of Continuation December 1, 2011 **30-3-5.4**
62A-1-111
62A-11-103(2)
62A-11-107
62A-11-326
62A-11-326.1
62A-11-326.2
62A-11-326.3
62A-11-406(9)
63G-4-102 et seq.
78B-12-102(6)
78B-12-212
35A-7-105(2)
45 CFR 303.30
45 CFR 303.31
45 CFR 303.32

R590. Insurance, Administration.
R590-230. Suitability in Annuity Transactions.
R590-230-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-230-2. Purpose.

(1) The purpose of this rule is to:

(a) set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed; and

(b) require insurers to establish a system to supervise recommendations.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-230-3. Scope.

(1) This rule shall apply to any recommendation to purchase, replace, or exchange an annuity made to a consumer by a producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

R590-230-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "FINRA" means the Financial Industry Regulatory Authority or its successor.

(3) "Producer" includes an individual producer or agency producer.

(4) "Recommendation" means advice provided by a producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, replacement or exchange of an annuity in accordance with that advice.

(5) "Replacement" is as defined in R590-93-3.

(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) age;

(b) annual income;

(c) financial situation and needs, including the financial resources used for the funding of the annuity;

(d) financial experience;

(e) financial objectives;

(f) intended use of the annuity;

(g) financial time horizon;

(h) existing assets, including investment and life insurance holdings;

(i) liquidity needs;

(j) liquid net worth;

(k) risk tolerance; and

(l) tax status.

R590-230-5. Duties of Insurers and of Producers.

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. These requirements are intended to supplement and not replace the disclosure requirements of R590-229;

(b) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase, or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement that the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and

(d) in the case of an exchange or replacement of an annuity the exchange or replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fee or charges for riders and similar product enhancements;

(ii) the consumer would benefit from product enhancements and improvements; and

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(2) Prior to the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under Subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under Subsection (4)(b), neither a producer nor an insurer shall have any obligation to a

consumer under Subsection (1) or (3) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or producer.

(b) An insurer's issuance of an annuity subject to Subsection (4)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) A producer or, where no producer is involved, the responsible insurer representative, shall at the time of sale:

(a) make a record of any recommendation subject to Subsection (1);

(b) obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including the following:

(i) the insurer shall maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;

(ii) the insurer shall establish standards for producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-6;

(iii) the insurer shall provide product specific training and training materials that explain all material features of its annuity products to its producers;

(iv) the insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(vi) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under Subsection (6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section R590-230-7 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subsection (6)(b)(ii).

(ii) An insurer's supervision system under Subsection (6)(a) shall include supervision of contractual performance under this Subsection. This includes the following:

(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) annually obtaining a certification from a senior manager, who has responsibility for the contracted functions that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(iii) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) A producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) truthfully responding to an insurer's request for confirmation of suitability information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(8)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce, including investigate, the provisions of this rule.

(b) For Subsection(8)(a) to apply, an insurer shall:

(i) monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

R590-230-6. Producer Training.

A producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.

R590-230-7. Compliance Mitigation and Penalties.

(1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its producer's, violation of this rule;

(b) a producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and

(c) appropriate penalties and sanctions.

(2) Any applicable penalty under 31A-2-308 for a violation of this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

R590-230-8. Records.

Insurers and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

R590-230-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 60 days from the rule's effective date.

R590-230-10. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: insurance, annuity suitability
March 26, 2012 31A-2-201
Notice of Continuation June 2, 2009 31A-22-425

R590. Insurance, Administration.
R590-261. Health Benefit Plan Adverse Benefit Determinations.
R590-261-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-629(4) which requires the commissioner to adopt rules that establish standards for independent reviews, Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and 31A-2-212(5)(b) wherein the commissioner requires compliance with the Patient Protection and Affordable Care Act.

R590-261-2. Purpose.

The purpose of this rule is to provide a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of a final adverse benefit determination.

R590-261-3. Scope.

(1) Except as provided in Subsection (2), this rule applies to all health benefit plans as defined in 31A-1-301 except for a grandfathered health plan as defined in 45 CFR 147.140.

(2) If all grandfathered health benefit plans are administered consistently, a carrier may, for the grandfathered health benefit plans, voluntarily comply with the independent review process set forth in this rule, otherwise a grandfathered health benefit plan is subject to R590-203.

(3) A self-funded health plan may voluntarily comply with the independent review process set forth in this rule.

R590-261-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for purposes of this rule:

(1)(a) "Adverse benefit determination" means:

(i) based on the carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(A) denial of a benefit;

(B) reduction of a benefit;

(C) termination of a benefit; or

(D) failure to provide or make payment, in whole or part, for a benefit; or

(ii) rescission of coverage.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(ii) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not medically necessary or appropriate.

(2) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under Title 31A.

(3) "Claimant" means an insured or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(4) "Clinical reviewer" means a physician or other appropriate health care provider who:

(a) is an expert in the treatment of the insured's medical condition that is the subject of the review

(b) is knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition;

(c) holds an appropriate license or certification; and

(d) has no history of disciplinary actions or sanctions.

(5) "Final adverse benefit determination" means an adverse benefit determination that has been upheld by a carrier at the completion of the carrier's internal review process.

(6) "Independent review" means a process that:

(a) is a voluntary option for the resolution of a final adverse benefit determination;

(b) is conducted at the discretion of the claimant;

(c) is conducted by an independent review organization designated by the commissioner;

(d) renders an independent and impartial decision on a final adverse benefit determination; and

(e) may not require the claimant to pay a fee for requesting the independent review.

(7)(a) "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect.

(b) "Rescission" does not include a cancellation or discontinuance of coverage under a health benefit plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

R590-261-5. Adverse Benefit Determination Procedure Compliance.

An adverse benefit determination procedure shall be compliant with this rule and the requirements for adverse benefit determinations set forth in 29 CFR 2560.503-1 and 45 CFR 147.136.

R590-261-6. Notice of Right to Independent Review.

(1) With each notice of a rescission of coverage or final adverse benefit determination, the carrier shall provide written notice of the claimant's right for an independent review of the determination.

(2) The notice in Subsection (1) shall include the following, or substantially equivalent, statement:

"We have rescinded your coverage or denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by a health care professional who has no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. To receive additional information about an independent review, contact the Utah Insurance Commissioner by mail at Suite 3110 State Office Building, Salt Lake City UT 84114; by phone at 801 538-3077; or electronically at healthappeals.uid@utah.gov."

R590-261-7. Exhaustion of Internal Review Process.

The carrier's internal review process shall be exhausted prior to an independent review unless:

(1) the carrier agrees to waive the internal review process;

(2) the carrier has not complied with the requirements for the carrier's internal review process except for those failures to comply that are based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm to the claimant and are not part of a pattern or practice of violations; or

(3) the claimant has requested an expedited independent

review pursuant to Section 11 at the same time as requesting an expedited internal review.

R590-261-8. Independent Review Organizations.

(1) The commissioner shall compile and maintain a list of approved independent review organizations.

(2) To be considered for placement on the list of approved independent review organizations, an independent review organization shall:

(a) be accredited by a nationally recognized private accrediting entity;

(b) meet the requirements of this rule; and

(c) have written policies and procedures that ensure:

(i) that all reviews are conducted within the specified time frames;

(ii) the selection of qualified and impartial clinical reviewers;

(iii) the confidentiality of medical and treatment records and clinical review criteria; and

(iv) that any person employed by or under contract with the independent review organization adheres to the requirements of this rule.

(3) An applicant requesting placement on the list of approved independent review organizations shall submit for the commissioner's review:

(a) the Independent Review Organization Application form available on our website at www.insurance.utah.gov;

(b) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity; and

(c) the application fee.

(4) The commissioner shall terminate the approval of an independent review organization if the commissioner determines that the independent review organization has lost its accreditation or no longer satisfies the minimum requirements for approval.

(5)(a) An independent review organization may not own or control, or be owned or controlled by:

(i) a carrier;

(ii) a health benefit plan;

(iii) a health benefit plan's fiduciary;

(iv) an employer or sponsor of a health benefit plan;

(v) a trade association of:

(A) health benefit plans;

(B) carriers; or

(C) health care providers; or

(vi) an employee or agent of any one listed in Subsection (5)(a)(i) through (v).

(b) An independent review organization and the clinical reviewer assigned to conduct an independent review may not have a material professional, familial, or financial conflict of interest with:

(i) the carrier;

(ii) an officer, director, or management employee of the carrier;

(iii) the health benefit plan;

(iv) the plan administrator, plan fiduciaries, or plan employees;

(v) the insured or claimant;

(vi) the insured's health care provider;

(vii) the health care provider's medical group or independent practice association;

(viii) a health care facility where the service would be provided; or

(ix) the developer or manufacturer of the service that would be provided.

R590-261-9. General Independent Review Requirements.

The requirements of this section shall apply in addition to the requirements for a standard independent review, an expedited independent review and an independent review of experimental or investigational service or treatment.

(1) The carrier shall pay the cost of the independent review organization for conducting the independent review.

(2) An independent review is available to the claimant regardless of the dollar amount of the claim involved.

(3)(a) The claimant shall have 180 calendar days after the receipt of a notice of a final adverse benefit determination to file a request with the commissioner for an independent review.

(b) The claimant shall use the Independent Review Request Form available on our website at www.insurance.utah.gov, or a substantially similar form, to file the request.

(c) A request for an independent review sent to the carrier instead of the commissioner shall be forwarded to the commissioner by the carrier within one business day of receipt.

(4) The independent review decision is binding on the carrier and claimant except to the extent that other remedies are available under federal or state law.

R590-261-10. Standard Independent Review.

(1)(a) Upon receipt of a request for an independent review, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time of rescission or the health care service was requested or provided;

(ii) if a health care service is the subject of the adverse benefit determination, the health care service is a covered expense;

(iii) the claimant has exhausted the carrier's internal review process; and

(iv) the claimant has provided all the information and forms required to process an independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(2) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign on a random basis an independent review organization from the list of approved independent review organizations based on the nature of the health care service that is the subject of the review;

(b) notify the carrier of the assignment and that the carrier shall within five business days provide to the assigned independent review organization the documents and any

information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may submit additional information to the independent review organization within five business days of receipt of the commissioner's notification. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(3) Within 45 calendar days after receipt of the request for an independent review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse benefit determination to:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(4) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-11. Expedited Independent Review.

(1) An expedited independent review process shall be available if the adverse benefit determination:

(a) involves a medical condition of the insured which would seriously jeopardize the life or health of the insured or would jeopardize the insured's ability to regain maximum function;

(b) in the opinion of the insured's attending provider, would subject the insured to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse benefit determination; or

(c) concerns an admission, availability of care, continued stay or health care service for which the insured received emergency services, but has not been discharged from a facility.

(2)(a) Upon receipt of a request for an expedited independent review, the commissioner shall immediately send a copy of the request to the carrier for an eligibility review.

(b) Immediately upon receipt of the request, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service that is the subject of the adverse benefit determination is a covered expense; and

(iii) the claimant has provided all the information and forms required to process an expedited independent review.

(c)(i) The carrier shall immediately notify the commissioner and claimant whether:

(A) the request is complete; and

(B) the request is eligible for an expedited independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for an expedited independent review notwithstanding the carrier's initial determination that the request is ineligible and shall require that the request be referred for an expedited independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall immediately:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within one business day provide to the assigned independent review organization all documents and information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within one business day submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4)(a) The independent review organization shall as soon as possible, but no later than 72 hours after receipt of the request for an expedited independent review, make a decision to uphold or reverse the adverse benefit determination and shall notify:

(i) the carrier;

(ii) the claimant; and

(iii) the commissioner.

(b) If notice of the independent review organization's decision is not in writing, the independent review organization shall provide written confirmation of its decision within 48 hours after the date of the notification of the decision.

(5) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-12. Independent Review of Experimental or Investigational Service or Treatment Adverse Benefit Determinations.

(1) A request for an independent review based on experimental or investigational service or treatment shall be submitted with certification from the insured's physician that:

(a) standard health care service or treatment has not been effective in improving the insured's condition;

(b) standard health care service or treatment is not medically appropriate for the insured; or

(c) there is no available standard health care service or treatment covered by the carrier that is more beneficial than the recommended or requested health care service or treatment.

(2)(a) Upon receipt of a request for an independent review involving experimental or investigational service or treatment, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, one business day for an expedited review, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service or treatment that is the subject of the adverse benefit determination is a covered expense except for the carrier's determination that the service or treatment is experimental or investigational for a particular medical condition and is not explicitly listed as an excluded benefit under the insured's health benefit plan;

(iii) the claimant has exhausted the carrier's internal review process unless the request is for an expedited review; and

(iv) the claimant has provided all the information and

forms required to process the independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) shall inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within five business days, one business day for an expedited review, provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within five business days, one business day for an expedited review, submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4) Within one business day after receipt of the request, the independent review organization shall select one or more clinical reviewers to conduct the review.

(5) The clinical reviewer shall provide to the independent review organization a written opinion within 20 calendar days, five calendar days for an expedited review, after being selected.

(6) The independent review organization shall make a decision based on the clinical reviewer's opinion within 20 calendar days, 48 hours for an expedited review, of receiving the opinion and shall notify:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(7) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-13. Disclosure Requirements.

(1) Each carrier shall include a description of the independent review procedure in or attached to the policy and certificate, and may include a description with other evidence of coverage provided to the insured.

(2) The description required in Subsection (1) shall include a statement that informs the insured:

(a) of the right to file a request for an independent review of a final adverse benefit determination and include the contact information for the commissioner; and

(b) that an authorization to obtain medical records shall be required for the purpose of reaching a decision.

R590-261-14. Records.

(1) An independent review organization shall maintain a written record of each independent review for the current year plus 5 years.

(2) The records of an independent review organization shall be available for review by the commissioner upon request.

R590-261-15. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-261-16. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-261-17. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health benefit plan insurance
December 8, 2011 **31A-22-629**
31A-2-201
31A-2-212

R590. Insurance, Administration.
R590-262. Health Data Authority Health Insurance Claims Reporting.
R590-262-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

R590-262-2. Purpose and Scope.

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936: and

(ii) the electronic commerce agreements established in a business associate agreement; and

(b) for the purpose of coordination of health benefit plans, and;

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3) An insurer that covers fewer than 2500 individual Utah residents is exempt from all requirements of this rule.

R590-262-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

(2) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires an insurer to report.

(3) "Health Insurance" has the same meaning as found in Subsection 31A-1-301(76).

(4) "Insurer" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in Subsection 31A-1-301(92), including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in Subsection 31A-1-301(161), licensed by the Utah Insurance Department, and that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Subsection 31A-1-301(74);

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; or

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy under Title 31A, Chapter 40 or health benefit plan funded by a self-insurance arrangement.

(5) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R590-262-4. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

(4) An insurer shall submit the information in Subsections (2) and (3) for all Utah residents.

R590-262-5. Required Data Elements.

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each insurer shall submit data for all fields contained in the submission specifications if the data are available to the insurer.

(a) Each insurer must submit enrollment files as a flat file.

(b) Each insurer must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional Claim.

(c) Each insurer must submit pharmacy claims as a flat file.

(2) Each insurer must submit the enrollment files data elements as required in R428-15.

R590-262-6. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R590-262-7. Insurer Registration.

Each insurer shall register with the Office by completing the registration online at http://health.utah.gov/hda/apd/ no later than February 1, 2012, and annually thereafter no later than September 1.

R590-262-8. Testing of Files.

Insurers that become subject to this rule shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R489-262-9. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are: First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the insurer must submit for each enrolled member and claim. An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within ten state business days of notice that the data does not meet the submission requirements.

R590-262-10. Replacement of Data Files.

An insurer may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the insurer can establish exceptional circumstances for the replacement.

R590-262-11. Provider Notification.

(1) The following notification must be provided to a person that receives shared data, "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this section shall be provided in coordination with provider participation in the master index patient index and the cHIE programs.

R590-262-12. Limitation of Liability.

A person furnishing information of the kind described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner of insurance or the executive director of the Department of Health or their employees or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

R590-262-13. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided in Section 31A-2-308.

R590-262-14. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R590-262-15. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance claims reporting
March 7, 2012 31A-22-614.5(3)(a)

R592. Insurance, Title and Escrow Commission.
R592-8. Application Process for an Attorney Exemption for Title Agency Licensing.
R592-8-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license a title agency.

R592-8-2. Purpose and Scope.

(1) The purposes of this rule are:

(a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;

(b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;

(c) to provide a process to apply for a request for exemption; and

(d) to provide a process to appeal a denial of a request for exemption.

(2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

(1) "Attorney" means a person licensed and in good standing with the Utah State Bar.

(2) "Real estate experience" includes:

(a) law firm transactional experience consisting of any or all of the following:

(i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;

(ii) financing and securing construction and permanent financing;

(iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;

(iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;

(v) conducting closings; and

(vi) estate planning and probate-related transactions and conveyances.

(b) law firm litigation experience consisting of any or all of the following:

(i) foreclosures;

(A) judicial and non-judicial;

(B) homeowner association (HOA) lien foreclosure;

(ii) either side of homeowner vs HOA litigation;

(iii) state construction registry litigation - mechanics lien filing and litigation;

(iv) real estate disputes or litigation involving:

(A) a real estate contract;

(B) a boundary line;

(C) a rights of way and/or easement;

(D) a zoning issue;

(E) a property tax issue;

(F) a title issue or claim;

(G) a landlord/tenant issue; and

(F) an estate and/or probate litigation involving real property assets, claims, and disputes.

(c) non-law firm experience consisting of any or all of the following:

(i) real estate agent, broker, developer, investor;

(ii) mortgage broker;

(iii) general contractor;

(iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;

(v) lender involved with any or all of the following real estate lending activities:

(A) lending;

(B) escrow; or

(C) foreclosure;

(vi) private lender;

(vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or title agency;

(viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;

(ix) escrow officer;

(x) title searcher; or

(xi) surveyor; and

(d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.

The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.

(1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency license under the exemption provided in 31A-23A-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.

(2) The applicant will submit a letter addressed to the Commission:

(a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and

(b) providing the following information:

(i) the applicant's name, mailing address and email, telephone number, and title license number;

(ii) a description of the applicant's real estate experience; and

(iii) why the applicant feels that experience qualifies the applicant for the exemption.

(3) The Commissioner will review the request for exemption within five business days of its receipt and

(a) request additional information from the applicant;

(b) preliminarily approve the request for exemption; or

(c) preliminarily disapprove the request for exemption.

(4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.

(5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.

(6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:

(a) notify the applicant of the denial; and

(b) inform the applicant of his right to agency review pursuant to R590-160.

(7) If the Commissioner's preliminary approval of a request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit

an electronic license application and pay the required fees and assessments.

R592-8-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-8-7. Enforcement Date.

The Commission will begin enforcing this rule on the rule's effective date.

R592-8-8. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: attorney exemption application process
June 25, 2009

31A-1-301
31A-2-308
31A-2-402
31A-2-404
31A-23a-102
31A-23a-204

R657. Natural Resources, Wildlife Resources.
R657-43. Landowner Permits.
R657-43-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, this rule provides the standards and procedures for private landowners to obtain landowner permits for:

(a) taking buck deer within the general unit hunt boundary area where the landowner's property is located during the general deer hunt only; and

(b) taking bull elk, buck deer or buck pronghorn within a limited entry unit.

(2) In addition to this rule, any person who receives a landowner permit must abide by Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(3) The intent of the general landowner buck deer permit is to provide an opportunity for landowners, lessees, or their immediate family, whose property provides habitat for deer, to purchase a general deer permit for the general unit hunt boundary area where the landowner's property is located.

(4) The intent of the limited entry landowner permit is to provide an opportunity for landowners, whose property provides habitat for deer, elk, or pronghorn, to be allocated a restricted number of permits for a limited entry bull elk, buck deer, or buck pronghorn unit, where the landowner's property is located. Allowing landowners a restricted number of permits:

(a) encourages landowners to manage their land for wildlife;

(b) compensates the landowner for providing private land as habitat for wildlife; and

(c) allows the division to increase big game numbers on specific units.

R657-43-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Eligible property" means:

(i) private land that provides habitat for deer, elk or pronghorn as determined by the division of Wildlife Resources;

(ii) private land that is not used in the operation of a Cooperative Wildlife Management Unit;

(iii) private land that is not used in the operation of an elk farm or elk hunting park;

(iv) land in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504; and

(v) for the purpose of receiving general buck deer permits, a minimum of 640 acres of private land owned or leased by one landowner within the general unit hunt boundary; or

(vi) private land, including crop land owned by members of a landowner association for limited entry permits.

(b) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(c) "Landowner" means any person, partnership, or corporation who owns property in Utah and whose name appears on a deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(d) "Landowner association" means an organization of private landowners who own property within a limited entry unit, organized for the purpose of working with the division.

(e) "Lessee" means any person, partnership, or corporation whose name appears as the Lessee on a written lease, for at least a one-year period, for eligible property used for farming or ranching purposes, and who is in actual physical control of the eligible property.

(f) "Limited entry unit" means a specified geographical area that is closed to hunting deer, elk or pronghorn to any person who has not obtained a valid permit to hunt in that unit.

(g) "Voucher" means a document issued by the division to a landowner, landowner association, or Cooperative Wildlife Management Unit operator, allowing a landowner, landowner association, or Cooperative Wildlife Management Unit operator to designate who may purchase a landowner big game hunting permit from a division office.

R657-43-3. Qualifications for General Landowner Buck Deer Permits.

(1) The director, upon approval of the Wildlife Board, may establish a number of general landowner buck deer permits within each region to be offered to eligible landowners or lessees for the general deer hunting season only.

(2) Only private lands will be considered in qualifying for general landowner buck deer permits. Public or state lands are not eligible.

(3) Crop lands will be considered in qualifying for general landowner buck deer permits if the crop lands provide habitat for deer and contribute to meeting unit management plan objectives.

(4) General landowner buck deer permits are limited to resident or nonresident landownersor lessees, and members of their immediate family.

R657-43-4. Qualifications for Limited Entry Permits.

(1) The Director, upon approval of the Wildlife Board, may establish a number of bull elk, buck deer and buck pronghorn limited entry permits to be offered to an eligible landowner association.

(2) Limited entry landowner permits are available for taking buck deer, bull elk or buck pronghorn, and may only be used on designated limited entry units.

(3) Only private lands that do not qualify for Cooperative Wildlife Management Units will be considered for limited entry landowner permits. Public or state lands are not eligible.

(4) Only private lands that qualify as eligible property will be considered for limited entry landowner permits.

(5) Applications for limited entry landowner permits will be received from landowner associations only.

(6) Only one landowner association, per species, may be formed for each limited entry unit as follows:

(a) A landowner association may be formed only if a simple majority of landowners, representing 51 percent of the eligible private lands within the herd unit, enter into a written agreement to form the association.

(b) The association may not unreasonably restrict membership to other qualified landowners in the unit.

(c) Each landowner association must elect a chairperson to represent the landowner association.

(d) The landowner association chairperson shall act as liaison with the division and the Wildlife Board.

(e) A landowner or landowner association may not restrict legal established passage through private land to access public lands for the purpose of hunting.

R657-43-5. Application for General Landowner Buck Deer Permits.

(1) Applications for general landowner buck deer permits are available from division offices.

(2) Only one eligible landowner or lessee may submit an application for the same parcel of land within the respective general unit hunt boundary area.

(3) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(4) Applications must include:

(a) total acres owned within the respective general unit hunt boundary area;

(b) signature of the landowner; and

(c) location of the private lands, acres owned, county and region.

(5) In cases where the landowner's or lessee's land is in more than one general unit hunt boundary area, the landowner or lessee may select one of those units from which to receive the permit.

(6) a non-refundable handling fee must accompany each application.

(7) a landowner may not apply for or obtain a general landowner buck deer permit without possessing a Utah hunting or combination license.

(8) Applications will be available by January 7.

(9) Applications must be completed and returned to the regional division office.

(10) The signature on the application will serve as an affidavit certifying ownership.

R657-43-6. Application for Limited Entry Permits.

(1) Applications for limited entry landowner permits are available from division offices and from division wildlife biologists.

(2) Applications to receive limited entry landowner permits must be submitted by a landowner association for lands within the limited entry hunt unit where the private lands are located.

(3) Applications must include:

(a) total acres owned by the association within the limited entry hunting unit and a map indicating the privately owned big game habitat;

(b) signature of each of the landowners within the association including acres owned, with said signature serving as an affidavit certifying ownership;

(c) a distribution plan for the allocation of limited entry permits by the association;

(d) a copy of the association by-laws; and

(e) a non-refundable handling fee.

(4) The division shall, upon request of the applicant, provide assistance in preparing the application.

(5) Applications must be completed and returned to the appropriate division office by September 1 annually.

(6) The division shall forward the application and other documentation to the Regional Wildlife Advisory Councils for public review.

(7) Recommendations by the Councils will then be forwarded to the Wildlife Board for review and action.

(8) Upon approval by the Wildlife Board, a Certificate of Registration will be issued to the landowner association.

R657-43-7. General Permits and Season Dates.

(1) The following number of general landowner buck deer permits may be available to a landowner or lessee:

(a) one general landowner buck deer permit may be issued for eligible property of 640 acres; and

(b) one additional general landowner buck deer permit may be issued for each additional 640 acres of eligible property.

(c) If an individual has both owned and leased eligible property, the acreage may be combined in determining the number of permits to be issued.

(2) Permittees may select only one general landowner buck deer permit (archery, rifle or muzzleloader) as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) General landowner buck deer permits are for personal use only and may not be transferred to any other person.

(b) If the landowner or lessee is a corporation, the person eligible for the permit must be a shareholder, or immediate family member of a shareholder, designated by the corporation.

(4) Any person who is issued a general landowner buck deer permit under this rule is subject to all season dates, weapon restrictions and any other regulations as provided in the guidebook of the Wildlife Board for taking big game.

(5) The fee for a general landowner buck deer permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

(6) Nothing in this rule shall be construed to allow any person to obtain more than one general buck deer permit from any source or take more than one buck deer during any one year.

(7) Permits will be issued beginning in June, in the order that applications are received, and permits will continue to be issued until all permits for each region have been issued.

(8) To receive a general landowner buck deer permit, the eligible person must possess or obtain a Utah hunting or combination license.

R657-43-8. Limited Entry Permits and Season Dates.

(1) Only bull elk, buck deer or buck pronghorn limited entry permits may be applied for by the landowner association.

(2)(a) The division and landowner chairperson shall jointly recommend the number of permits to be issued to the landowner association.

(b) When consensus between the landowner chairperson and the division is not reached, applications shall include justification for permit numbers for review by the Wildlife Regional Advisory Councils and the Wildlife Board.

(3) Permit numbers shall fall within the herd unit management guidelines. Permit numbers will be based on:

(a) the percent of private land big game habitat within the unit that is used by wildlife; or

(b) the percentage of use by wildlife on the private lands.

(4) Landowners receiving vouchers may personally use the vouchers or reassign the vouchers to any legal hunter.

(5) All landowners who receive vouchers, and transfer the vouchers to other hunters must:

(a) allow those hunters receiving the vouchers access to their private lands for hunting; and

(b) allow the same number of public hunters with valid permits, equal to the number of vouchers transferred, to access the landowner association's private land for hunting during the appropriate limited entry bull elk, buck deer or buck pronghorn hunting season, except as provided in Subsection (6).

(6)(a) Landowners who transfer vouchers to other hunters may deny public hunters access to the landowner association's private land for hunting by requesting, through the landowner association, a variance to Subsection (5)(b) from the Wildlife Board.

(b) The requested variance must be provided by the landowner association in writing to the division 30 days prior to the appropriate Regional Advisory Council meeting scheduled to review Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(c) The variance request must be presented by the landowner association to the appropriate local Regional Wildlife Advisory Council. The local Regional Wildlife Advisory Council shall forward a recommendation to the Wildlife Board for consideration and action.

(7)(a) Any person who is issued a limited entry landowner permit must follow the season dates, weapon restrictions and any other regulations governing the taking of big game as specified in Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(b) to receive a limited entry landowner permit, the person designated on the voucher must possess or obtain a Utah hunting or combination license.

(8) A limited entry landowner permit authorizes the permittee to hunt within the limited entry unit where the eligible property is located.

(9) Nothing in this rule shall be construed to allow any person, including a landowner, to take more than one buck deer,

one bull elk or one buck pronghorn during any one year.

R657-43-9. Limited Entry Permit Allocation and Fees.

(1) Upon approval of the Wildlife Board, the division shall issue vouchers to landowner associations that may be used to purchase limited entry permits from division offices.

(2) The fee for any limited entry landowner permit is the same as the cost of similar limited entry buck deer, bull elk or buck pronghorn limited entry permits.

R657-43-10. Limited Entry Permit Conflict Resolution.

(1)(a) If landowners representing a simple majority of the private land within a landowner association are not able to resolve any dispute or conflict arising from the distribution of permits or other disagreement within its discretion and arising from the operation of the landowner association, the permits allocated to the landowner association shall be made available to the general public by the division.

(b) Landowner associations may be eligible to receive landowner permits in subsequent years if the landowner association resolves the conflict or dispute by a simple majority of the landowners.

(2) The division shall not issue landowner permits to a landowner association that has not complied with the provisions of this rule.

KEY: wildlife, landowner permits, big game seasons
January 10, 2012 23-14-18
Notice of Continuation March 5, 2012 23-14-19

R671. Pardons (Board of), Administration.
R671-305. Notification of Board Decision.
R671-305-1. Notification of Board's Decision.

(a) Decisions of the Board shall be reached by a majority vote and reduced to a written decision and order. Copies of the decision and order shall be sent to the offender, and the Department of Corrections. The Board shall publish results of Board decisions.

(b) The Board shall also provide a Rationale for Decisions and Orders for all Original Hearings; Re-Hearings and for Parole Violation Hearings where a decision and order for parole, termination or expiration has been made.

KEY: government hearings
March 26, 2012 77-27-9.7
Notice of Continuation January 31, 2012

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.5 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-2-2. Definitions.

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

2.3 "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.

2.4 "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.

2.5 "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

2.6 "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.

2.7 "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.

2.8 "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

2.9 "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

2.10 "ICC" means International Code Council, Inc.

2.11 "IFC" means International Fire Code.

2.12 "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

2.13 "NAFAA" means the North American Fire Arts Association.

2.14 "NFPA" means National Fire Protection Association.

2.15 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.16 "Person" means an individual, company, partnership or corporation.

2.17 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.18 "Resale" means the act of reselling class B or C explosives to a new party.

2.19 "SFM" means the State Fire Marshal.

2.20 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.21 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.22 "UCA" means Utah Code Annotated.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

3.12 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.5 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.6 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.7 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. Display, Sale, and Signage of Aerial Devices.

6.1 In addition to those requirements in R710-2-3, R710-2-4 and R710-2-5, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

6.1.1 Provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station.

6.1.2 Provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

6.1.2.1 The aerial display shall not be more than 40 feet from the designated employee's work station.

6.1.2.2 The aerial devices are restrained by using at least one of the following methods:

6.1.2.2.1 The aerial devices are placed in a bin or bins that meets the definition stated in Section 2.3 of these rules.

6.1.2.2.2 The aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover.

6.1.3 Place the aerial devices in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee.

6.2 Where aerial devices are sold in permanent structures, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

6.3 Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

6.3.1. Aerial fireworks are designed to travel up to 150 feet into the air and then explode.

6.3.2 Aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition.

6.3.3 Anyone under the age of 16 shall not handle or operate aerial fireworks.

6.3.4 Ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction.

6.3.5 Aerial fireworks shall not be ignited within 150 feet of the point of sale.

6.3.6 Please read and obey all safe handling instructions before using aerial fireworks.

R710-2-7. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

7.1 Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized

deputies, or any authorized enforcement official.

7.10 The applicant shall indicate on the application which license the applicant wishes to apply for:

7.10.1 Display Operator

7.10.2 Special Effects Operator

7.10.3 Flame Effects Operator

7.10.4 Flame Effects Performing Artist

7.11 Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

7.11.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.11.2 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

7.11.3 Submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM.

7.11.4 Submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.12 Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

7.12.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.12.2 The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

7.12.3 Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

7.12.4 Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

7.13 The written examination stated in Section 7.11.1 or 7.12.1 shall be valid for five years from the date of the examination.

7.14 Applicants seeking an original license as stated in Sections 7.11 of these rules, may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days. By the end of the 45 day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

7.15 At the end of the five year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.16 of these rules.

7.16 After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

7.16.1 Complete one show or performance annually

7.16.2 Attend an operator safety class or flame effects performing artist meeting annually

7.16.3 Work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

7.17 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Sections 7.11 or 7.12 of these rules.

7.18 Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

7.19 Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten (10) working days after the conclusion of any show and send it to the State Fire Marshal. If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

R710-2-8. Importer or Wholesaler License.

8.1 Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

8.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

8.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

8.4 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

8.5 Every licensee shall notify the SFM within thirty (30) days of any change of address or location.

8.6 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

8.7 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

8.8 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

9.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person of applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the AHJ.

9.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class.

9.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.6 Failure to accurately complete the After Action Report.

9.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

9.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

9.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

9.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-2-10. Amendments and Additions.

10.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

10.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

10.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

10.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

10.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

10.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

10.2.1.3.1 In self storage units where the owner allows it.

10.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

10.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

10.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

10.2.1.3.5 Wholesalers warehouse.

10.2.1.3.6 An approved Group M occupancy.

10.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

10.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

10.2.2 All other periods of time, except those stated in Section 9.2.1 of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

10.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

10.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

R710-2-11. Fire Department Displays.

11.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

11.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

11.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display. A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

11.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

KEY: fireworks
March 9, 2012 **53-7-204**
Notice of Continuation June 4, 2007

R710. Public Safety, Fire Marshal.
R710-8. Day Care Rules.
R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

2.6.1 Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

2.6.2 Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "NFPA" means National Fire Protection Association.

2.10 "SFM" means State Fire Marshal.

R710-8-3. Amendments and Additions.

3.1 Exemptions

3.1.1 Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

3.2 Fire Code Amendments

3.2.1 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Educational Group E, Day Care, is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I-4, day care facilities, Child care facility, is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 46, Section 4603.6.1 Group E is deleted.

3.3 Family Day Care

3.3.1 Family Day Care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

3.3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.3.2.1 Type 1 Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as allowed in IFC, Chapter 10, Section 1029.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.4.1 Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section 1009 or Section 1010 or Section 1026.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10, Standard for Portable Fire Extinguishers.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units quarterly and shall include the complete evacuation from the building of all clients and staff. At least annually, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.4 Day Care Centers

3.4.1 Day Care Centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of Day Care Center.

3.4.2 Emergency Evacuation Drills shall be completed as required in IFC, Chapter 4, Section 405.

3.5 Requirements for all Day Care

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.5.2 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.5.3 The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.5.3.1 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-8-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the

codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, day care
July 8, 2011 **53-7-204**
Notice of Continuation March 13, 2012

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-300. Concealed Firearm Permit and Instructor Rule.
R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Section 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or a LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Section 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Section 53-5-704(8);

(c) " certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Section 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Section 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32A-12-209;

(ii) Section 32A-12-220;

(iii) Section 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Section 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide.

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification. Revocation of a permit, instructor certification, or certificate of qualification does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit must submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau which shall include the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee of $60.00 for Utah residents and $65.00 for nonresidents, in the form of cash, check, money order, or credit card, which consists of the fee established by Section 53-5-704 and 53-5-707, along with the FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) if the applicant is a nonresident who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law, a copy of the applicant's current concealed firearm permit or concealed

weapon permit issued by the applicant's state of residency.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(i) shall not be required to pay the application fee; and

(ii) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsection 53-5-704(2) and (3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(2) and (3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee of $50.00, in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight (8) hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt

requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification must submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau which shall include the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card which is $15.00 fee to renew a permit or $25.00 fee to renew an instructor certification.

(2) In addition to the items listed in Subsection (1)(b), an instructor seeking to renew an instructor certification must submit evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(3) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(4) A fee consisting of $7.50 will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than thirty days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(5) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(6)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(7)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. Application for a LEOJ Permit.

(1)(a) In order to obtain a LEOJ permit under Section 53-5-711, an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for a LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue a LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-9. Termination of LEOJ Status.

(1) When the bureau receives notice that a LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(2) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue a LEOJ permit.

R722-300-10. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or a LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) A LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that a LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) a LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or a LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested,

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-11. Review Hearing Before the Board.

(1)(a) Review hearings before the board will be informal and shall be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau must establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which shall:

(a) state the board's decision and the reasons for the board's decision; and

(b) indicate that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-12. Records Access.

(1) Information provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsections 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

KEY: concealed firearm permit, concealed firearm permit instructor

March 9, 2012 53-5-701 through 53-5-711

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-15, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2007 edition of the National Electrical Safety Code, C2-2007, as approved by the American National Standards Institute, ISBN 07-7381-4893-8, incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-100-3(H), Consumer Complaints, Practice and Procedure Governing Formal Hearings.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2001 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2001, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical

energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2006 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2006, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and
8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric utility industries

February 7, 2012	**54-3-1**
Notice of Continuation December 5, 2007	**54-3-7**
	54-4-1
	54-4-8
	54-4-14
	54-4-23

R746. Public Service Commission, Administration.
R746-320. Uniform Rules Governing Natural Gas Service.
R746-320-1. General Provisions.

A. Scope and Applicability -- This rule applies to the methods and conditions of service used by utilities furnishing natural gas service in Utah. These rules supersede any conflicting provisions contained in tariffs of natural gas utilities subject to Commission jurisdiction. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-15, Deviation from Rules.

B. Definitions --

1. "British Thermal Unit" or "BTU" means the quantity of heat needed to raise the temperature of one pound of water one degree Fahrenheit.

2. "CFR" means the Code of Federal Regulations, April 1, 1994 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Cubic Foot" means:

a. when gas is supplied and metered to customers at the standard delivery pressure, as defined in Subsection R746-320-2(G), the volume of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot;

b. when gas is supplied to customers through positive displacement meters at other than standard delivery pressure, the volume of gas which occupies one cubic foot after applying a suitable correction factor to simulate delivery and metering at standard delivery pressure; the correction factor shall include allowance for gas temperature when it is reasonably practical to determine that factor;

c. when gas is supplied through other meters, the volume of gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at absolute pressure as provided in utility tariff rates or regulations approved by this Commission.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.

6. "Customer Meter" means the device used to measure the volume of gas transferred from a gas utility to a customer.

7. "Main" means a distribution line that is designed to serve as a common source of supply for more than one service line. The term does not include service lines.

8. "Service Line" means a distribution line that transports gas from a common source of supply to:

a. a customer meter or the connection to a customer's piping, whichever is farther downstream, or

b. the connection to a customer's piping if there is no customer meter.

9. "Therm" means a unit of heating value equalling 100,000 BTU.

10. "Utility" means a gas corporation as defined in Section 54-2-1.

R746-320-2. Quality Control Equipment, Standards, Records and Reports.

A. Testing Equipment and Facilities --

1. Utilities shall own and maintain or have access to the testing equipment necessary to make Commission-required tests of the gas sold by the utilities. The Commission may approve arrangements for individual utilities to have their testing done by another utility or competent party.

2. Utilities shall properly maintain testing equipment which shall be subject to Commission inspection. The Commission may inspect the testing equipment at reasonable times.

3. Utilities shall locate and use testing equipment so as to ensure that gas samples taken are fairly representative of the gas being distributed in the portion of the system being tested.

B. Heating Value --

1. Utilities shall file with the Commission, as part of their tariffs, the range within which the average heating value per unit of gas to be sold will fall.

2. Utilities shall maintain the heating value established in their tariffs and in so doing shall regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.

3. When utilities distribute supplemental or substitute gas, they shall ensure that it performs satisfactorily regardless of heating value.

C. Heating Value Tests, Records, and Reports --

1. Utilities shall make sufficient tests, or have access to tests made by their suppliers, to accurately determine the heating value of the gas sold.

2. Tests shall be made at a location, or locations, which will ensure the samples taken fairly represent the gas being furnished to the utilities and their customers. Test reports shall be available for review when requested by the Commission.

D. BTU Measurement Equipment --

1. Utilities shall maintain or have access to an approved type calorimeter in an adequate testing station as specified in Subsection R746-320-2(C)(1). Utilities may use an approved recording calorimeter which shall be checked at least once each month with an approved standard calorimeter or against a standard gas.

2. Both calorimeter and method of testing shall be subject to Commission inspection.

3. Utilities may use BTU measuring equipment other than calorimeters upon petition to and approval by the Commission.

E. Gas Odor -- Gas supplied to customers shall be odorized in accordance with 49 CFR 192.625, which is incorporated by this reference.

F. Purity of Gas -- Gas supplied to customers shall contain no more than 75 to 80 parts per million of total sulfur. Gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered.

G. Standard Delivery Pressure -- Standard Delivery Pressure shall be four ounces above local atmospheric pressure. Maximum and minimum low pressure delivery pressures shall conform to 49 CFR 192.623, which is incorporated by reference.

H. Pressure Testing and Maintenance of Standards --

1. Utilities shall make every reasonable effort to maintain adequate gas pressure. Utilities shall make determinations and keep records of pressures adequate to enable the utilities at all times to have accurate current knowledge of the pressure existing in their distribution systems. Pressure records shall be properly identified, dated, and filed in the utilities' records.

2. Utilities shall periodically test and maintain the accuracy of any recording pressure gauges.

3. Pressure limiting and regulator stations shall comply with 49 CFR 192.741, which is incorporated by this reference.

R746-320-3. Use, Location, and Accuracy Tests of Meters.

A. Use of Meters -- Gas sold by utilities shall be metered through approved meters except in case of emergency, or when otherwise authorized by the Commission as provided in R746-100-15, Deviation from Rules. Meters shall bear an identifying number and shall be plainly marked to show the units of the meter index. When gas is delivered at higher than standard pressure, the contract, rate schedule, or gas bill shall specify the method to be used to correct the gas volume to standard pressure.

B. Meter Location -- Meters may be located either inside or outside of buildings. The locations selected by utilities and provided by customers shall be convenient for inspection and reading of the meters and shall comply with 49 CFR 192.353, 192.355, 192.357, incorporated by reference.

C. Meter Accuracy at Installation -- New meters and reinstalled meters shall be no more than one percent fast or two percent slow.

D. Initial Tests of Meters -- Meters shall be tested and meet the foregoing accuracy limits before installation. When meters are placed into service, the meter index reading shall be recorded.

E. Periodic Tests of Meters --

1. Utilities shall adopt schedules for periodic tests and repairs of positive displacement meters. Utilities shall keep records of accuracy of meters periodically tested and shall analyze the records to determine meter service life for purposes of adjusting the periods for testing and servicing meters.

2. Unless a time extension or a statistical sampling method is approved by the Commission, meter test intervals for displacement meters of the following rated capacities shall not exceed the following:

TABLE

a.	To 300 cu. ft./hr	10 yrs
b.	300 to 600 cu. ft./hr	5 yrs
c.	600 to 1,500 cu. ft./hr	3 yrs
d.	Over 1,500 cu. ft./hr	2 yrs
e.	Orifice Meters, inspected and checked for accuracy	1 yr

F. Meter Tests by Request --

1. Upon written request, utilities shall test a customer's meter promptly. If a meter has been tested within 12 months preceding the date of the request, the utility concerned may require the customer to make a deposit to defray the costs of the test. If the meter is found to be more than three percent inaccurate, either over or under, the deposit shall be refunded; otherwise the deposit may be processed by the utility as a service charge. The deposit shall not exceed the estimated cost of performing the test.

2. The customer shall be entitled to observe the test and the utility shall forward a copy of the written report of the test to the customer.

G. Referee Meter Tests -- If there is a dispute over a test, the customer concerned may request a referee test in writing. The Commission may require the deposit of a testing fee in connection with a referee test to defray costs of the test. Upon filing of the request and receipt of the deposit, if needed, the Commission shall notify the utility and the utility shall not remove the meter until the Commission so instructs. The meter shall be tested in the presence of the Commission's representative, and if the meter is found to be more than three percent inaccurate, the customer's deposit may be refunded; otherwise it may be kept.

H. Billing Adjustments for Meter Variance --

1. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent fast, there shall be refunded to the customer the amount billed in error for one-half the period since the last test. The one-half period shall not exceed six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond, that date.

2. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent slow, the utility may bill the customer in an amount equal to the unbilled error for one-half the period since the last test, that one-half period shall not exceed six months.

3. When there is a nonregistering meter, the customer may be billed on an estimate based on previous bills for similar usage. The estimated period shall not exceed three months.

4. When there is unauthorized use, the customer may be billed on a reasonable estimate of the gas consumed.

I. Standard Meter Test Methods -- Meter tests shall be made by trained personnel using approved methods and testing equipment. The methods and apparatus recommended in the Gas Displacement Standard, Second Edition 1985, published by the American Gas Association and incorporated by this reference, may be used to satisfy this rule.

J. Meter Testing Equipment -- Utilities shall own and maintain, or have access to, at least one five-cubic-foot prover of an approved type, as well as other equipment necessary to test meters. Meter testing equipment shall be installed in a meter testing station designed for that purpose.

K. Records of Meter Tests -- Utilities shall record the original data of meter tests on standard forms and preserve the data until the next time meters are tested.

L. Meter Records -- Utilities shall keep permanent records of their meters. Utilities shall start a record for each meter when purchased and include the date of purchase, identification number, manufacturer's name, type, and rating. Utilities shall keep records of any tests, adjustments, and repairs. Utilities shall keep records of meter readings when the meters are installed or removed from service together with the addresses of customers served. The meter records shall be systematically kept and filed until the meters are retired.

R746-320-5. Design, Construction, and Operation of Plant.

A. Generally --

1. Facilities owned or operated by utilities and used in furnishing gas shall be designed, constructed, maintained and operated so as to provide adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers, and others may be subjected from their equipment and facilities.

2. Utilities shall use accepted good practice of the gas industry, but in no event shall those practices be construed to require less than required by this rule, R746-409, Pipeline Safety in Utah, Chapter 13 of Title 54, and the federal Natural Gas Pipeline Safety Act, 49 U.S.C. Section 1671 et seq.

B. Regulators -- If the gas pressure maintained in a customer's service line exceeds the standard delivery pressure, the utility concerned shall install an approved service regulator on the service line on the customer's premises. The regulator shall be set to deliver gas within the established delivery pressure range and shall have a vent piped to the outdoors if the regulator is located within a building. If pressure in the service line exceeds 100 p.s.i.g., a primary regulator, in addition, shall be installed on the service line outside the building. Regulators shall not be required for service of industrial or commercial customers served through high pressure meters.

C. Main Extensions -- Utilities shall adopt, with Commission approval, uniform rules and regulations governing main extensions.

D. Installation and Maintenance of Service Lines and Meters --

1. Utilities shall furnish, install and maintain, free of charge, a gas service line from the gas main adjacent to customers' premises to the customers' property lines or curbs, except that utilities shall not be required to install the piping on the outlet side of meters.

2. Customers may be required by utilities to install or pay in full or in part for gas service lines from property lines to customers' buildings in accordance with approved tariffs.

3. Service lines and meters shall be owned and maintained by utilities.

E. Service Lines for Temporary Service --

1. Utilities may provide temporary service to customers and may require the customers to bear any costs, in excess of any salvage value realized, of installing and removing service lines.

2. Temporary service shall be considered service provided for emergency or short-term use, as specified in approved tariffs, or service for speculative operations or those of questionable

permanency.

F. Gas Service Line Valves --

1. New gas service lines, entering customers' buildings, which are operating at a pressure greater than 10 p.s.i.g., and other service lines two inches or larger, I.P.S., shall be equipped with a gas service line valve located on the service line outside buildings served. If a service line valve is underground, it shall be located in a durable curb box at an easily-accessible location. The top of the curb box shall be at ground level and shall be kept visible by the customer.

2. Service lines shall be equipped with a gas service line valve near the meter. If a service line is not equipped with an outside shut-off, the inside shut-off shall be a type which can be sealed in the off position.

R746-320-6. Records.

A. Maps and Records --

1. Utilities shall keep suitable maps or records to show size, location, character, and date of installation of major plant items.

2. Upon Commission request, and in form specified by or satisfactory to the Commission, utilities shall file adequate descriptions or maps showing the location of facilities.

B. Operating Records --

1. Utilities shall keep appropriate operating records for use in statistical and analytical studies for regulatory purposes.

2. Operating records shall be subject to Commission inspection at reasonable times.

C. Availability of Records -- Utilities shall keep any records made mandatory by these rules at the utilities' offices in Utah. Commission representatives may inspect mandatory records at reasonable times and in a reasonable manner during normal operating hours.

D. Reports to the Commission -- Utilities shall furnish to the Commission, at times and in form designated by the Commission, the results of required tests and summaries of mandatory records. At Commission request, utilities shall also furnish the Commission with information concerning facilities or operations.

E. Preservation of Records -- The Commission adopts the standards of 18 CFR 225, incorporated by reference, to govern the preservation of records of natural gas utilities subject to the jurisdiction of the Commission.

R746-320-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts 18 CFR 201, incorporated by this reference, as the uniform system of accounts for gas utilities subject to Commission jurisdiction. Utilities shall use this system.

B. Uniform List of Retirement Units of Property -- The Commission adopts 18 CFR 216, incorporated by this reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of gas plant. Utilities subject to Commission jurisdiction shall use this schedule.

R746-320-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer before the current billing cycle.

2. A "catch-up bill" is a bill based on an actual reading provided after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been provided under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-320-8(D).

C. Limitations on Providing a Backbill -- A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling and the correct calculation to be used in the backbill has been determined. This limitation does not apply to fraud, theft of service, and denial of access to meter situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service provided more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect. In the case of a crossed meter condition, the period covered by the backbill may not exceed six months.

2. When there is customer fraud, theft of service, or denial of access to the meter, the utility shall estimate a bill for the period over which the fraud or theft was perpetrated or that denial of access occurred. The time limitations of Subsection R746-320-8(D)(1) do not apply to customer fraud or theft situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period and Interest -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. However, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case where there has been fraud or theft, interest will be assessed from the time the original payment was due.

R746-320-9. Overbilling.

A. Standards and Criteria for Overbilling -- Billing under the following conditions constitutes overbilling:

1. a meter registering more than three percent fast, or a defective meter;

2. use of an incorrect heat value multiplier;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a crossed meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate --

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations --

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle after the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills, whichever is less. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, when credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment. An exception to the 24 month limitation period applies when the overbilling can be shown to be due to some cause, the date of which can be fixed. In this instance the overcharge shall be computed back to that date and the entire overcharge shall be refunded.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known about an overpayment, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of this rule provision.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

KEY: rules and procedures, public utilities, utility service shutoff

November 1, 2000	**54-2-1**
Notice of Continuation December 5, 2007	**54-4-1**
	54-4-7
	54-4-18
	54-4-23

R746. Public Service Commission, Administration.
R746-349. Competitive Entry and Reporting Requirements.
R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a provider of local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in this rule:

A. "CLEC" means a public telecommunications service provider that did not hold a certificate to provide public telecommunications service as of May 1, 1995.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

D. "ILEC" means a telephone corporation which held a certificate to provide public teleocmmunications service as of May 1, 1995.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of Title 63G, Chapter 4 and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation or liabilities to the Utah Public Telecommunications Service Support Fund, 54-8b-15, or the Hearing and Speech Impaired Fund, 54-8b-10. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer and state fund liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission its proposed price list or if ordered by the Commission, the prices, terms, and conditions of a competitive contract. Each filing may be made electronically and shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC may be considered protected documents under the Government Records Access Management Act, if the CLEC complies with the requirements of that act.

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by an ILEC, the Commission or other party, a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3 is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules or by a Commission order apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3. All powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)

R746-340-2 (E) (1) -- Tariff filings required

R746-340-2 (E) (2) -- Exchange Maps

R746-34l -- Lifeline (CLEC with ETC status)

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule.

R746-349-7. Informal Adjudication of Certain CLEC Merger and Acquisition Transactions.

A. A CLEC may obtain approval of a transaction subject to 54-4-28 (merger, consolidation or combination), 54-4-29 (acquiring voting stock or securities), and 54-4-30 (acquiring properties) in the following manner. Such adjudicative proceedings are designated as informal adjudicative proceedings pursuant to 63G-4-203 unless converted to formal adjudicative proceedings.

1. The CLEC shall submit an application which includes, but is not limited to:

a. identification that it is not an ILEC,

b. identification that it seeks approval of the application pursuant to this rule,

c. a reasonably detailed description of the transaction for which approval is sought,

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and

e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

2. Upon receipt of the CLEC's application, the Commission will issue a public notice stating that the application has been filed, that any interested party may submit comments on the application within 14 days following public notice and may submit reply comments within 21 days following public notice, and provide notice of the date and time for a hearing on the application, which shall be scheduled to occur within 30 days following the issuance of the public notice.

3. If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

4. The Commission may convert the proceeding on an application into a formal adjudicative proceeding based upon an objection made in comments or reply comments, evidence submitted, other reasonable basis, which may include failure of the transaction to qualify for streamlined treatment from a federal agency, or its own motion and may continue the hearing on the application as needed.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

A. The Commission may initiate or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by 54-8b-2.3(8).

1. A request to initiate any proceeding pursuant to this rule shall:

a. Identify the telecommunications corporation or corporations and the public telecommunications service or services whose pricing flexibility the requesting party believes may be subject to revocation or imposition of conditions or restrictions;

b. The basis for the belief; and

c. The relief sought.

2. A request to initiate a proceeding shall be served upon the telecommunications corporation or corporations the requesting party has identified in the request, the Division and the Committee.

3. The telecommunications corporation or corporations against whom the request is directed and any other interested party may respond to the request in accordance with the Commission's procedural rules and standard practices.

4. If a proceeding is initiated, an interested party may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning or restriction under section 54-8b-2.3(8). The party shall certify that it seeks to review that confidential information solely for purposes of determining whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any persons who may be able to use the confidential information in business decisions to any party's competitive advantage. Prior to disclosing any confidential information, the Commission or the Division:

a. Shall require the requesting party to execute an appropriate nondisclosure agreement;

b. Shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing such information; and

c. Shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if such telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of such confidential information within 10 calendar days after receiving the notice required by 349-9.4.b. The Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.

5. In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for

confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.

6. Nothing in this rule limits the ability of any party or the Commission to raise or address any issue in any other proceeding or as permitted by law.

KEY: essential facilities, imputation, public utilities, telecommunications

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Notice of Continuation March 6, 2012 **54-8b-2**
54-8b-3.3
63G-4

R746. Public Service Commission, Administration.
R746-351. Pricing Flexibility.
R746-351-1. Purpose and Authority.

This rule establishes a procedure by which the pricing flexibility granted to an incumbent telephone corporation under Section 54-8b-2.3(2)(b) becomes effective.

R746-351-2. Definitions.

A. "Competitive Local Exchange Carrier" (CLEC) means a provider of public telecommunications services certificated by the Commission pursuant to 54-8b-2.1, other than an ILEC.

B. "Incumbent Local Exchange Carrier" (ILEC) means an incumbent telephone corporation as defined under Section 54-8b-2(4).

C. "Substitute or Substitutable Service" means a service offered by a CLEC that is an economic alternative in terms of quality, quantity, and price to that provided by the ILEC.

R746-351-3. Grant of Pricing Flexibility.

A. Procedure -- The Commission shall grant pricing flexibility to an ILEC in an independent proceeding brought by the ILEC, or in the certification proceeding for a CLEC for the same or substitutable services offered by the ILEC in the same geographic area served by both the CLEC and the ILEC. In granting pricing flexibility to an ILEC, the Commission shall:

1. define the geographic area in which pricing flexibility can become available to the ILEC; and

2. list the public telecommunications services the ILEC is authorized to price flexibly.

B. Grant Effectiveness -- A grant of pricing flexibility by the Commission to an ILEC does not become effective except as provided in Section R746-351-4.

R746-351-4. Effectiveness of Pricing Flexibility.

A. ILEC Petition -- Pricing flexibility granted to an ILEC does not become effective until all of the conditions specified in Section 54-8b-2.3(2)(b)(iii) have been satisfied. The ILEC shall:

1. Identify:

a. the CLEC and the docket in which pricing flexibility was granted to the ILEC;

b. the defined geographic area identified by the Commission, pursuant to R746-351-3(A)(1), in which pricing flexibility is to become effective for the ILEC;

c. the public telecommunications services being provided by the CLEC in the defined geographic area; and

d. The specific ILEC services, from the list of the public telecommunications services identified by the Commission pursuant to R746-351-3(A)(2), to be priced flexibly by the ILEC in the defined geographic area that are the same or substitutable for the public telecommunications services provided by the CLEC in the defined geographic area; and

2. Certify that:

a. the CLEC has begun providing the identified public telecommunications services in the defined geographic area;

b. the ILEC has allowed the CLEC to interconnect with the essential facilities and to purchase the essential services of the ILEC in accordance with the terms of an agreement approved by the Commission; and

c. the ILEC is in compliance with the applicable rules and orders of the Commission adopted or issued under Section 54-8b-2.2; and

3. Include:

a. a proposed price list or competitive contract for the service or group of services to be pricing flexibility; and

b. evidence which demonstrates that the prices to be offered by the ILEC under the proposed price list or competitive contract are in compliance with Section 54-8b-3.3.

B. Notice -- The ILEC shall serve notice of the request on:

1. all parties in the original proceeding in which the ILEC was granted pricing flexibility; and

2. all other certificated providers of public telecommunications services in the defined geographic area.

3. The notice shall include information on the time periods for responses and Commission action as provided in R746-351-4(C).

C. Time Frame -- Within 15 days after service of the notice of the request under this rule, the Commission shall grant, deny or determine whether a hearing is necessary to consider the request. Interested persons shall file responses to the request within 10 days after service of the notice of request.

D. Ruling -- The Commission shall issue a ruling determining the ILEC's compliance with Section 54-8b-2.3(2) and whether ILEC pricing flexibility is effective:

1. within 14 days after the Commission grants or denies a request, if there is no hearing on the request; or

2. if the Commission holds a hearing on the request, within 14 days after the conclusion of the hearing.

KEY: pricing flexibility*, public utilities, telecommunications

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Notice of Continuation March 6, 2012 **54-8b-2.2**
54-8b-2.3
63G-4-207
63G-4-503

R746. Public Service Commission, Administration.
R746-365. Intercarrier Service Quality.
R746-365-1. General Provisions.

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-100-15, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2. Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and

maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by another telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration

of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DS0 or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DS0 or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair

intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-100-15, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

a. issue the reports required by this section; and

b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

a. the name and address of the telecommunications corporation;

b. the circuit or facility type requested in the service order;

c. the date and hour the service order was received;

d. the reason for the delay;

e. the number of days the order has been delayed;

f. the expected order completion date for each service order;

g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;

h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

a. identify the telecommunications corporation experiencing trouble;

b. the affected services;

c. the time, date and nature of the report;

d. the cause and action taken to clear the trouble and its recorded disposition;

e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

a. services to the ILEC's retail customers in the aggregate;

b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

a. its retail customers;

b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;

c. interconnecting telecommunications corporations; and

d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILECs operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the

ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information

specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning --A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals:

a. four months;

b. one year; and

c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

a. intraLATA toll and switched access trunks;

b. EAS and local trunks;

c. directory assistance trunks;

d. 911 and E911 trunks;

e. operator service trunks;

f. commercial mobile radio service and wireless traffic; and

g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four -month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

KEY: interconnection, public utilities, telecommunications
June 1, 1999 54-8b-2
Notice of Continuation January 6, 2009

R746. Public Service Commission, Administration.
R746-440. Voluntary Resource Decision.
R746-440-1. Filing Requirements for a Request for Approval of a Resource Decision.

(1) A request for approval of a Resource decision shall include testimony and exhibits which provide:

(a) A description of the Resource decision,

(b) Information to demonstrate that the Energy utility has complied with the applicable requirements of the Act and Commission rules,

(c) The purposes and reasons for the Resource decision,

(d) An analysis of the estimated or projected costs of the Resource decision, including the engineering studies, data, information and models used in the Energy utility's analysis,

(e) Descriptions and comparisons of other resources or alternatives evaluated or considered by the Energy utility, in lieu of the proposed Resource decision,

(f) Sufficient data, information, spreadsheets, and models to permit an analysis and verification of the conclusions reached and models used by the Energy utility,

(g) An analysis of the estimated effect of the Resource decision on the Energy utility's revenue requirement,

(h) Financial information demonstrating adequate financial capability to implement the Resource decision,

(i) Major contracts, if any, proposed for execution or use in connection with the Resource decision,

(j) Information to show that the Energy utility has or will obtain any required authorizations from the appropriate governmental bodies for the Resource decision, and

(k) Other information as the Commission may require.

(2) Notice of a request for approval of a Resource decision.

(a) At least five calendar days prior to filing a request for approval of a Resource decision, the Energy utility shall provide public notice of its request for approval of a Resource decision. The public notice shall provide a description of the request and information on how interested persons my obtain, from the Energy utility, further information about the request or a copy of the request.

(b) At least five calendar days prior to filing a request for approval of a Resource decision, the Energy Utility shall inform the Commission of the anticipated filing and the means by which the Energy Utility has made, or will make, the public notice.

(3) Issues regarding the production, treatment and use of materials of a confidential or proprietary nature, including issues regarding who is entitled to review the materials, will be determined by the Commission.

R746-440-2. Process for Approval of a Resource Decision.

(1) Following a filing of a request for approval of a Resource decision:

(a) At a scheduling conference, the Commission will set an intervention deadline and schedule the time for conducting a public hearing on the request. The Commission will issue a Scheduling Order subsequent to the scheduling conference.

(b) The Commission will issue a protective order, to facilitate access to and exchange of information which is claimed to be confidential or of a proprietary nature.

(c) Discovery may commence. Responses to discovery requests shall be made within 21 calendar days after receipt, or as otherwise agreed between the parties or ordered by the Commission.

(d) Delivery of documents may be made by electronic means (e.g., email, disk, facsimile), instead of paper versions, as agreed by the parties or as ordered by the Commission.

(2) The Energy utility shall maintain a complete record of all materials submitted to the Commission and all materials submitted in response to discovery requests during a Resource decision process for 10 years from the date of the Commission's final order in a Resource decision proceeding. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

R746-440-3. Process for Review and Determination of a Request for an Order to Proceed with Implementation of an Approved Resource Decision.

(1) A request for such Commission review and determination shall include testimony and exhibits which provide:

(a) An explanation of the nature and cause of the change in circumstances or projected costs, including how the Energy utility became aware of the change in circumstances or projected cost and any action it has taken,

(b) An explanation of why an Order to Proceed is or is not, in the Energy utility's view, the proper response to the changed circumstances,

(c) The Energy utility's updated projections regarding the impact of the changed circumstances or projected costs on the timing, cost and other aspects of the approved Resource decision,

(d) The costs incurred to date in connection with the Resource decision,

(e) The Energy utility's updated projections of any unavoidable costs if the approved Resource decision is not pursued to completion, and

(f) Major proposed contracts or contract amendments, if any, to be used in the event of an Order to Proceed.

(2) Notice of a request for review and determination of an Order to Proceed shall be provided, by the Energy utility, to all parties in the docket in which the Resource decision was approved and otherwise as determined by the Commission.

(3) The Energy utility shall maintain a complete record of its analyses and evaluations relating to the Order to Proceed, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests during a proceeding involving a review and determination for at least 10 years from the date of the Commission's final order in a Commission proceeding for review and determination of an Order to Proceed with Implementation of an approved Resource decision. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

(4) Issues regarding the production, treatment and use of materials of a confidential or proprietary nature, including issues regarding who is entitled to review those materials will be determined by the Commission.

KEY: resource decision, energy utility, filing requirements
March 19, 2007 54-17-100 et seq.
Notice of Continuation March 8, 2012

R907. Transportation, Administration.
R907-69. Records Access.
R907-69-1. Purpose and Authority.

This rule provides information about where and to whom to direct requests for access to records of the Utah Department of Transportation (UDOT) under the Government Records Access and Management Act. This rule is authorized by Section 63G-2-204(2)(d).

R907-69-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Coordinator
Utah Department of Transportation
Calvin Rampton Complex, 2nd Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Coordinator
Utah Department of Transportation
P.O. Box 148430
Salt Lake City, Utah 84114-8430

(If by email)

GRAMA Coordinator
grama@utah.gov

(If by fax)

GRAMA Coordinator
801-965-4838

R907-69-3. Request Form.

A request for public information form is available on the UDOT website at: www.udot.gov/main/uconowner.gf?n=7060323128709256.

R907-69-4. Appeals.

Appeals regarding determinations of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal
UDOT Executive Director
Calvin Rampton Complex, 1st Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Appeal
UDOT Executive Director
P.O. Box 141265
Salt Lake City, Utah 84114-1265

(If by email)

GRAMA Appeal
UDOT Executive Director
UDOTExecDir@utah.gov

(If by Fax)

GRAMA Appeal
UDOT Executive Director
801-965-4338

KEY: public records, government documents, records access, GRAMA
March 12, 2012 63G-2-204

R918. Transportation, Operations, Maintenance.
R918-4. Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.
R918-4-1. Purpose and Authority.

The purpose of this rule is to establish a procedure for using volunteer groups and third party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-4-2. Application for the Adopt-A-Highway Program.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor shall submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

R918-4-3. Conditions of Adopt-A-Highway Participation.

If the Adopt-A-Highway application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of eleven years may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities such as the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

R918-4-4. Conditions of Sponsor-A-Highway Participation.

A business, government entity, group, or person participating in the Sponsor-A-Highway program shall:

(1) be legally empowered to enter a contract in the state of Utah; and

(2) use their legal name or a registered DBA name.

R918-4-5. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-6. Recognition Signs.

(1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

R918-4-7. Replacement of Signs.

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

R918-4-8. UDOT's Responsibilities.

UDOT shall:

(1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;

(2) furnish litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel;

(3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and

(4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer
March 12, 2012 72-1-201
Notice of Continuation August 25, 2008

R926. Transportation, Program Development.
R926-4. Establishing and Defining a Functional Classification of Highways in the State of Utah.
R926-4-1. Authority.

This rules establishes the procedure and criteria by which highways shall be functionally classified as required by Utah Code Ann. Section 72-4-102.5

R926-4-2. Incorporation by Reference.

The Department incorporates by reference Federal Highway Administration Publication No. FHWA-ED-90-006, "Highway Functional Classification - Concepts, Criteria, and Procedures" (U.S. Department of Transportation, March 1989). The publication will be referred to as the "Functional Classification Manual".

R926-4-3. Initiating a Change in the Functionally Classified Road System.

A request to consider changing the functional classification of an existing roadway may be initiated by an official of the local transportation agency responsible for the route by the Metropolitan Planning Organization with jurisdiction over the proposed change or by a Department staff member. Requests are to be forwarded to the Department's Systems Planning and Programming Division through the office of the local Region Director.

R926-4-4. Procedure to Determine Functional Classification of Roads.

(1) The procedure the Department uses to determine the functional classification for roads will follow the concepts and procedures identified in the Functional Classification Manual and will meet the guidelines relating to the extent of road miles and vehicle miles traveled of rural and urban functional classification systems. The final system will be as reviewed and approved by the Federal Highway Administration.

(2) Traffic volumes and road mileage will come from data the Department reports on an annual basis. Population information will be taken from the most recent U.S. Census information.

R926-4-5. Schedule for Updating the Functionally Classified Road System.

(1) The schedule to update the Functionally Classified Road System is based on the U. S. Census, with a major 10-year update initiated after the release of census date. There will also be a mid-census review and an opportunity for annual adjustments.

(2) The major, or decennial, update, begins after the US Census Bureau releases information on urban and urbanized areas based on population and population density. This is historically completed about three years after the census count. Boundaries for small urban and urbanized areas are initially determined by the Census Bureau. They are then adjusted to fit local conditions by the Department in consultation with the underlying local authorities responsible for transportation. Road functional classifications are then determined by the Department, using the same consultation process and the concepts, procedures, and criteria identified in the Functional Classification Manual. The recommended functional classification changes are then forwarded to the local Federal Highway Administration Division Office for review, approval, and adoption as the Functionally Classified Highway System for the state.

(3) The mid-census review is initiated by the Department approximately five years after the major update has been completed and is similar to the decennial update. Road functional classifications are reviewed on the entire system, using the procedures and criteria identified in the Functional Classification Manual. The Department will consult with local official and forward recommended changes to the local Federal Highway Administration Division Office for review, approval, and adoption. Changes to urban boundaries and related rural or urban classifications are not considered in this review.

(4) Each year, the Department will review proposals to make changes in functional classification. This adjustment considers routes that experienced changes that were unforeseen during the regular system-wide review process and which are of a time-sensitive nature that precludes waiting for the next regular review. This adjustment is for minor revisions only and will not consider changes in mileage or vehicle miles traveled limits, boundary, or urban-rural classification changes.

KEY: functional classification, roads, transportation, census
March 26, 2007 72-4-102.5
Notice of Continuation March 20, 2012

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client;

(g) a copy of the two party check on a need to know basis; and

(h) the month the client is scheduled for review or reestablishment.

(10) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that

directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must complete the application process and sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense. Providers that completed the application process prior to August 1, 2011 need to provide additional information to the Department contractor. If the provider does not provide this additional information, the provider will not be eligible for CC payments as of January 1, 2012.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of

fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 9 p.m. and 6 a.m. except;

(a) for a child under the age of 24 months old,

(b) to accommodate a special needs child, or

(c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a

third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in

Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered

individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

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