

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**KEY: contracts, construction, construction disputes**  
**March 15, 2005** **63A-5-103 et seq.**  
**Notice of Continuation November 14, 2012** **63G-6-103**  
**63G-6-804**

**R23. Administrative Services, Facilities Construction and Management.****R23-5. Contingency Funds.****R23-5-1. Purpose.**

(1) This rule establishes policies and procedures regarding contingency funds held by the Division.

(2) It provides guidelines for the source, use and reporting of contingency funds as provided in Title 63A, Chapter 5.

**R23-5-2. Authority.**

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

**R23-5-3. Definitions.**

(1) "Appropriated Funds" means funds appropriated to the Division for capital projects to be administered by the Division. This includes state funds such as the General Fund as well as proceeds from state General Obligation Bonds.

(2) "Board" means the State Building Board established under Title 63A, Chapter 5, Part 1.

(3) "Division" means the Division of Facilities Construction and Management established under Title 63A, Chapter 5, Part 2.

(4) "Non-appropriated Funds" means any funds which are provided for a project which are not Appropriated Funds.

(5) "Project Reserve" means the account provided for in Subsection 63A-5-209(2).

(6) "Statewide Contingency Reserve" means the account provided for in Subsection 63A-5-209(1)(c).

**R23-5-4. Applicability.**

(1) The provisions of this rule shall apply to all projects or portions of projects funded through Appropriated Funds.

(2) The provisions of this rule may be waived to the extent necessary in order to comply with specific requirements associated with the project funds such as specific legislative direction or requirements associated with state revenue bonds.

**R23-5-5. General Provisions.**

(1) The balances in the Statewide Contingency Reserve and the Project Reserve may be redirected to other purposes by the Legislature.

(2) New projects may not be initiated from the Statewide Contingency Reserve nor from the Project Reserve unless authorized by the Legislature. This prohibition does not apply to remedial work associated with previously authorized and completed projects.

(3) The Division may utilize any number of subaccounts required to maintain separate accounting of Appropriated Funds as required by the source of the funds.

**R23-5-6. Funding of Statewide Contingency Reserve.**

(1) All Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve upon their receipt by the Division. This includes budget elements previously referred to as "design contingency" and "project contingency."

(2) The Division shall budget for contingencies based upon a sliding scale percentage of the construction cost.

(a) For new construction, the sliding scale shall range from 4-1/2% to 6-1/2%.

(b) For remodeling projects, the sliding scale shall range from 6% to 9-1/2%.

(c) The sliding scale shall be approved by the Board and kept on file by the Division.

(d) When projects are funded from both Appropriated Funds and Non-appropriated Funds, the amount budgeted for

contingencies shall be prorated so that only that portion associated with the Appropriated Funds' share of the project is transferred to the Statewide Contingency Reserve.

(e) Any remaining balance as of July 1, 1993 of Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve as provided in this rule.

**R23-5-7. Use of Statewide Contingency Reserve.**

(1) The Statewide Contingency Reserve may provide additional funding to a project when:

(a) necessary construction costs arise on projects after the construction has been bid;

(b) costs for other elements of a project exceed the amount budgeted; or

(c) necessary costs arise which were not budgeted for.

(2) As previously directed by the Legislature, unbudgeted costs included in Subsection R23-5-6(1)(c) may include legal services, insurance, surveys, testing and inspection, and bidding costs.

(3) The Statewide Contingency Reserve may be used to fund changes in scope only if the scope change is necessary for the proper functioning of the program that was provided for in the approved project scope. The Division shall take steps as necessary to minimize the utilization of the Statewide Contingency Reserve for scope changes.

(4) With the prior approval of the Board, the Statewide Contingency Reserve may be used to fund unanticipated costs on projects funded through Non-appropriated Funds.

**R23-5-8. Funding of Project Reserve.**

(1) After all major construction contracts for a project have been awarded, and after setting aside adequate reserves for any remaining construction work which was not included in the construction contracts, any remaining balance of Appropriated Funds in the construction budget shall be transferred to the Project Reserve.

(2) Upon completion of the project, any residual balance of Appropriated Funds in any budget category shall be transferred to the Project Reserve; however, if the residual balance is the result of a reduction in a contract balance which had previously been funded from the Statewide Contingency Reserve, the residual balance shall be transferred instead to the Statewide Contingency Reserve.

**R23-5-9. Use of Project Reserve.**

The Division may utilize the Project Reserve only for the award of construction contracts which exceed the available construction budget. This may only be done after a review of other options to bring the cost within available funding and a determination that this action is necessary in order to meet the intent of the project.

**R23-5-10. Reporting Requirements.**

(1) The five-year building plan published annually by the Board shall include a summary report on the Statewide Contingency Reserve and the Project Reserve. This report shall include information on each Reserve summarized as follows for the most recently completed fiscal year:

(a) beginning balance;

(b) increases and decreases by type; and

(c) ending balance.

(2) At least annually, the Division shall analyze the balance in each Reserve and the projected needs based on already approved projects and determine if the balance is in excess of or less than the projected need. The results of this analysis shall be reported to the Legislature in its regular session.

(3) The Division shall report regularly to the Board on the

status of the Statewide Contingency Reserve and the Project Reserve.

**KEY: buildings, contingency fund\***

**1994**

**63A-5-209 et seq.**

**Notice of Continuation November 14, 2012**

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

**R23-6. Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations.**

**R23-6-1. Purpose.**

These rules implement Subsection 63A-5-103(1)(f) and 63A-5-206(8).

It is the purpose of these rules to ensure that the state owned facilities shall be life cycle cost effective. To achieve this objective, Value Engineering and Life Cycle Cost Analysis is to be used in the facility design process by the Division of Facilities Construction and Management.

**R23-6-2. Authority.**

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

**R23-6-3. Definitions.**

(1) Division: The Division of Facilities Construction and Management.

(2) Director: Director of the Division or designee

(3) GSF: Gross Square Feet

(4) Value Engineering: A structured methodology that analyzes functional requirements, identifies alternatives to perform these functions and evaluates the alternatives using Life Cycle Costing techniques.

**R23-6-4. Scope.**

To the extent appropriated by the legislature, Value Engineering will be applied to achieve cost effective design solutions and informed decision making by the Division, for the following activities:

TABLE

A. PROGRAMMING		
1. Site Selection		as feasible
2. Existing Facilities		Over 30,000 GSF
3. Energy Conservation		Always
4. New Facilities		Over 30,000 GSF
B. DESIGN FOR CONSTRUCTION		
1. New Construction		Over 30,000 GSF
2. Renovation		Over 30,000 GSF
3. Energy Conservation		Always

Only facilities which fall below these area requirements will be automatically exempted. Other projects may be subjected to Life Cycle Cost Analysis at the discretion of the Director.

**R23-6-5. Special Exemption Procedures.**

Upon written request by the Director, the Building Board may issue a special exemption for a facility from meeting the Life Cycle Costing requirements of these rules. The Director's special exemption request shall include a full justification.

After reviewing the special exemption request, the Building Board will approve or disapprove the Director's request. Board approval shall be based on the findings that the public interest is best served by approval of the exemption.

**R23-6-6. Methodology.**

One or more methods of economic evaluation may be used as appropriate to assess the Life Cycle Cost effectiveness for each of the activities identified in Section R23-6-4. Methods may include, but are not limited to:

(1) Standard practice for measuring Total Life Cycle Cost of building systems. American Society for Testing and Materials (ASTM designation E917-93).

(2) Recommended practice for measuring Net Present

Value and Internal Rates of Return for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 83-2657).

(3) Recommended practice for measuring Simple and Discounted Payback for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 84-2850).

(4) Standard practice for measuring Benefit to Cost and Savings to Investment Ratios for buildings and building systems. American Society for Testing Materials (ASTM E964-93).

**R23-6-7. Application.**

(1) The Division will issue Life Cycle Cost Guidelines for use by Fee Architect/Engineers and Consultants which will include:

- (a) Rules;
- (b) Basis for the calculation of Total Life Cycle Costing;
- (c) Guidance on sources of data for calculation;
- (d) Requirements for Life Cycle Cost analysis.

(2) The Division will issue specific instructions at the outset of each project describing the extent of Value Engineering or Life Cycle Cost analysis required for the project.

(3) The Division will use an independent Value Engineering Program to review the fee Architect/Engineer's design and use Value Engineering techniques to assist in identifying alternative viable design options to be subject to Life Cycle Cost analysis.

**R23-6-8. Responsibilities.**

(1) The Division shall:

(a) Manage and monitor the implementation of the Value Engineering and Life Cycle Costing program.

(b) Recommend budgets to the legislature to:

(i) Fund Value Engineering and Life Cycle Costing analysis for programming activity.

(ii) Fund Value Engineering and Life Cycle Costing analysis for Design and Construction Activity.

(c) Select suitably trained and qualified persons to conduct the Value Engineering and Life Cycle Costing Analysis program.

(d) Develop methods for evaluating, selecting, and implementing preferred alternatives from the output of the Value Engineering and Life Cycle Costing program.

**KEY: construction costs, public buildings\* 1995 63A-5-103 et seq. Notice of Continuation November 14, 2012**

**R23. Administrative Services, Facilities Construction and Management.****R23-9. Cooperation with Local Government Planning.****R23-9-1. Purpose and Authority.**

(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.

**R23-9-2. Definitions.**

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

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

(3) "Local government" means a "municipality" as defined in Section 10-9-103 or a "county" as defined in Section 17-27-103.

(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.

**R23-9-3. Exemption from Local Government Planning and Zoning Authority.**

(1) As provided for in Section 63A-5-206, Section 10-9-105, and Section 17-27-104.5, construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.

(2) This exemption does not apply to the business regulation authority of local governments except as follows.

(a) Any requirement to comply with the local government's planning or zoning ordinance in order to receive a business license or similar business permit shall be deemed to have been met through the division's determination of siting and design requirements.

(b) As otherwise provided by law.

**R23-9-4. Consideration of Local Government Planning.**

(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:

(a) master plan;

(b) zoning ordinance; and

(c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.

**R23-9-5. Additional Requirements for Secured Facilities.**

In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-

206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.

**KEY: construction, planning, zoning**

**March 24, 2003**

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**63A-5-103**

**R23. Administrative Services, Facilities Construction and Management.****R23-10. Naming of State Buildings.****R23-10-1. Purpose.**

This rule defines which entities have the authority to name state buildings.

**R23-10-2. Authority.**

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the Division).

**R23-10-3. Policy.**

It is the policy of the Utah State Building Board that the governmental entity that holds legal title to a given facility has the authority to determine an appropriate name for that facility, if the facility is of a significant size or function and the entity deems the naming of the facility to be appropriate. Specifically, the Building Board will have responsibility for naming those buildings for which title is held by the Division or the State Building Ownership Authority. The State Board of Regents will govern the naming of buildings in the Utah System of Higher Education.

**R23-10-4. Naming of Buildings Under the Authority of the Building Board.**

Buildings for which the Building Board has responsibility for naming as provided for in Section R23-10-3 shall be addressed as follows.

(1) Descriptive names, such as those identifying functions housed in the building or names based on geographic location, may be determined by the entity occupying the building. For buildings that house more than one agency, the Division shall be responsible for determining the building's name. Any concerns with names under this subsection (1) shall be raised with the Building Board for final resolution.

(2) Honorary names must be approved by the Building Board. Prior to consideration by the Building Board, information shall be provided demonstrating the appropriateness of the naming request. This may include information about the individual to be honored, the desires of the individual's family, and the basis for honoring the individual by naming the specific building.

**R23-10-5. Legislative Actions to Name a Building.**

Any legislative action to name a building supercedes the provisions of this rule.

**KEY: buildings, naming process**

**February 4, 2003**

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

**Notice of Continuation November 14, 2012**

**R23. Administrative Services, Facilities Construction and Management.****R23-14. Management of Roofs on State Buildings.****R23-14-1. Purpose and Authority.**

(1) This rule provides for the management of roofs on state buildings to prevent damage to the roof and to improve security of state buildings.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

**R23-14-2. Definitions.**

(1)(a) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

(b) "Agency" does not mean the State Capitol Preservation Board.

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

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

(4) "Employee" means a person employed by the division or a responsible agency.

(5)(a) "Responsible agency" means the agency responsible for managing a state building.

(b) "Responsible agency" does not mean the division.

(6) "State building" means a building owned by an agency.

**R23-14-3. Buildings Managed by the Division.**

(1) The division shall maintain control of and restrict access to the roof of buildings managed by the division. The division shall allow access only to duly authorized persons as provided in this section.

(2) The division shall maintain a register of all persons granted ongoing or limited access to the roofs it manages. This shall include a list of division employees that are granted ongoing access.

(3) The register required under Subsection (2) as well as a file of the completed roof access application/agreement forms shall be retained for a period of not less than three years.

(4) In order to obtain access, a person, who is not an employee of the division, must complete and execute a roof access application/agreement form which must be approved by the director.

(5) The roof access application/agreement form shall include:

(a) the name of the person granted access, the period of time for which access is granted, the reason for the access, and any restrictions on the access;

(b) an agreement from the person granted access to accept responsibility for and pay for the repair of any damage resulting from that person's access;

(c) an agreement to hold the agency and the State of Utah harmless from any liability or claim resulting from the person's access;

(d) a statement by the person requesting access that he has obtained adequate fall protection training as appropriate for the roof to be accessed and the activity to be performed thereon;

(e) the signature of the person requesting access; and

(f) the signature of the person granting access.

(6) The division shall provide, or require the person accessing the roof to provide, any fall protection equipment required by OSHA regulations or otherwise provide for the safety of the person accessing the roof.

(7) The access limitations of this rule may be modified or reduced in order to provide access to roofs or portions of roofs that are designed and constructed for such access.

**R23-14-4. Buildings Managed by Responsible Agencies.**

(1) Responsible agencies shall adopt and implement policies and procedures at least as stringent as those contained in Section R23-14-3 to provide for the control of and restricted access to roofs of buildings managed by the responsible agency.

(2) The responsible agency shall develop its own means of documenting those granted access and shall identify person(s) authorized to grant access to roofs.

(3) In applying the requirements of subsection R23-14-4(1), references to employees of the division in Section R23-14-3 shall mean employees of the responsible agency.

(4) Employees of the division shall have access to these roofs after checking in with the responsible agency. The responsible agency will not need to document access by employees of the division.

**R23-14-5. Access to Capital Improvement Funds for Roofing Repairs.**

(1) The division may refuse to use capital improvement funds appropriated to the division for the repair of roof damage if the responsible agency fails to implement or comply with the policies and procedures required by Section R23-14-4.

(2) The division may require a review of roof access records prior to accepting financial responsibility for the cost of repairing damage to a roof.

**KEY: public buildings, security, roofs**

**May 16, 2003**

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**63A-5-103**

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

#### **R23-21. Division of Facilities Construction and Management Lease Procedures.**

##### **R23-21-1. Purpose and Authority.**

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

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

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

##### **R23-21-2. New Leases.**

###### **A. Agency Request and Justification**

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

The justification statement should include the following:

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

###### **B. Securing Space**

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

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

###### **C. Negotiations**

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

###### **D. Lease Agreements**

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

###### **E. Lease Approval and Processing**

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

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

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

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

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

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

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

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

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

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

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

##### **R23-21-5. Non-State Tenants Utilizing State-Owned Space.**

###### **A. Request and Justification**

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

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

###### **B. Securing Space**

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

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

###### **C. Negotiations**

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

###### **D. Lease Agreements**

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

###### **E. Lease Approval and Processing**

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

#### **KEY: leases, leasing services**

**March 3, 1995**

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

**Notice of Continuation November 14, 2012**



**R23. Administrative Services, Facilities Construction and Management.****R23-24. Capital Projects Utilizing Non-appropriated Funds.**

**R23-24-1. Purpose.**  
To establish the policy of the Utah State Building Board relative to projects which are funded partially or totally by non-appropriated funds; establishing requirements for verification of funding and the timing of reimbursements to DFCM for expenditures made.

**R23-24-2. Authority.**

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

**R23-24-3. Background.**

The Division of Facilities Construction and Management (DFCM) is charged with the responsibility of administering the design and construction of capital facilities costing over \$100,000 for all state agencies and institutions regardless of funding source. The only exception to DFCM's administration is when a project is delegated to an agency or institution by the Utah State Building Board.

When projects are funded through Legislative appropriation, the funding is generally made available to DFCM prior to entering into contracts on those funds. However, many projects receive all or a part of their funding from other sources. Examples of these sources include donations, auxiliary funds, discretionary funds, reimbursed overhead, revenue bonds, and federal funds. In addition, some projects are made as a joint effort between state agencies or institutions and local governmental units. In these situations, DFCM needs to receive adequate assurance that the funding is in fact in place and that it will be reimbursed for expenditures as they are made.

**R23-24-4. Policy.**

The following policy will apply to all projects funded in whole or in part by non-appropriated funds.

(1) Before initiating the project, an executive having the authority to bind the agency or institution shall provide DFCM with a letter stating the funding to be provided by the agency or institution and committing to reimburse DFCM in accordance with this policy. In the case of a joint project with a non-state entity, a formal agreement shall be entered into.

(2) Prior to bidding the construction of the project, the agency or institution must provide DFCM with the following:

(a) A breakdown of the funding for the project showing the amount of cash available, the amount outstanding on legally enforceable contracts and commitments payable to the agency or institution and dedicated to the project, and the remaining difference.

(b) An explanation will be provided regarding how and when the remaining difference will be obtained. This difference may not exceed 25% of the project funding. DFCM reserves the right to require that a higher percentage of the funding be available if it determines that this is necessary to protect the state's interests.

(c) The agency or institution may commit that it will cover the remaining difference from other funds available to it until the full funding is obtained as long as this commitment is within the legal and financial capability of the agency or institution.

(d) Any exception to this policy must be approved by the Utah State Building Board and the state Director of Finance.

(3) The agency or institution will be responsible for providing its proportionate share of the funding. If the funding sources anticipated by the agency or institution do not meet its share of costs, the agency or institution must either provide alternate sources of funding or reduce the cost of the project to

bring it back within the level of available funding.

(4) Any non-monetary assets donated as a funding source must be liquidated by the institution prior to the bidding of construction. Exceptions may be granted by the Utah State Building Board and the state Director of Finance when alternate funding can be assured.

(5) It is the responsibility of the agency or institution to inform DFCM immediately of any restrictions on the funding provided, including federal grants or donor restrictions.

(6) Agencies and institutions will be required to reimburse DFCM for their share of expenditures ratably throughout the project. An exception may be made if the agency or institution is providing funding for a specific element of the project such as equipment, furnishings, or fountains. This exception will not be granted if the funding is for items which are a basic and necessary element of the construction of the project.

(7) DFCM will submit monthly billings to agencies and institutions for their share of the expenditures made. Payment will be due back to DFCM within 16 working days of the billing date or the mailing date whichever is later. DFCM will notify the state Division of Finance of any billings not paid within seven days of the due date. The Division of Finance may deduct any delinquent invoices for DFCM from the next appropriation allotment to the institutions or transfer the funds to DFCM as may be appropriate. Before taking any action, the Division of Finance will consult with the governing body or head of the agency or institution as appropriate.

**KEY: buildings**

**1994**

**Notice of Continuation November 14, 2012**

**63A-5-206(5)**

**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.

(4) Professional fund raisers that provide services only through online or web-based software may submit a copy of the terms and conditions that all users must agree to along with evidence demonstrating that a user accepted the terms and conditions.

**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**

<b>November 29, 2012</b>	<b>13-2-5</b>
<b>Notice of Continuation March 22, 2012</b>	<b>13-22-6</b>
	<b>13-22-8</b>
	<b>13-22-9</b>
	<b>13-22-10</b>

**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 consumer 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. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(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 health and fitness 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 consumer 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.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(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 Consumer Contracts for Health Spa Services.**

(1) Health Spa consumer contracts shall contain the following provisions:

(a) Each consumer contract shall contain:

(i) the date of the transaction, including the date health spa services will commence and expire;

(ii) the name and address of the health spa facility; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each consumer contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) A health spa that is required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSURES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO CONSUMER A PRORATA SHARE OF THE CONTRACT COST, BASED UPON THE UNUSED TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) A health spa that is not required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE (5) 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 consumer contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the contract are subject to deletion or change at the discretion of the facility.

(d) Each consumer 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) Consumer 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 consumer 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 consumer 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 consumer contract shall clearly state the beginning and expiration dates of its term. In any event, no consumer contract shall provide for a term of longer than thirty-six (36) months.

(2) The consumer 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, which shall include:

(i) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after the three-business-day cooling-off period under Section 13-23-3(6).

(ii) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after a consumer has received a portion of the contracted health spa services.

(3) Each consumer 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 consumer 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 consumers holding valid consumer contracts, the health spa shall, after obtaining the Division's approval, immediately refund the unused portion of all 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 consumer 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 consumers. The refund amount due shall be determined by multiplying the number of days remaining on the consumer's contract term as of the date of closure by the daily cost of the health spa services contract to the consumer 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 (5) 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 consumers holding contracts with the health spa, including:

(i) the total number of active consumer contracts;

(ii) the name, address, email address, and telephone number of each consumer;

(iii) the total cost of each consumer contract; and

(iv) the effective beginning and ending dates of each consumer contract;

(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 consumers holding contracts for health spa services, including:

(i) the amount of each consumer'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.

(e) Any complaints that the health spa has received from consumers and how the complaints were resolved.

(6) Within thirty (30) days prior to closing, the health spa shall notify consumers of the closure in writing and set forth what actions the health spa plans to take in regards to transfers, cancellations or refunds.

(7) Once the health spa has notified the Division of its intent to cease operations, it may not offer, sell or attempt to sell, solicit the sale of, or become a party to any new contracts to provide health spa services within forty-five (45) days preceding the anticipated date of closure.

(8) In the event a health spa transfers its contracts to an alternative facility located within five (5) miles of the facility of origin, neither the health spa facility transferring consumer contracts nor the health spa facility receiving consumer contracts may charge any additional fees to contract holders in order to gain access to or otherwise utilize services originally contracted for.

(a) Contract transfers shall be serviced at health spa facilities that are comparable to the facility of origin. In instances where consumers have paid for services that are not offered or are otherwise not comparable, the health spa shall obtain written authorization from consumers to transfer to the noncomparable facility or make an offer to rescind the contract.

#### **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 thirty (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 thirty (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 fifteen (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 consumer 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**

November 29, 2012  
Notice of Continuation March 22, 2012

63G-3-201  
13-2-5  
13-23-1

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

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

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

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

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

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

58-1-404.

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

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

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

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

- (vii) remorse.
- (b) The following factors should not be considered as mitigating circumstances:
- (i) forced or compelled restitution;
  - (ii) withdrawal of complaint by client or other affected persons;
  - (iii) resignation prior to disciplinary proceedings;
  - (iv) failure of injured client to complain; and
  - (v) complainant's recommendation as to sanction.
- (17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).
- (18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).
- (19) "Probation" means disciplinary action placing terms and conditions upon a license;
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.
- (21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.
- (22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.
- (23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.
- (24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.
- (25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.
- (27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.
- (28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.
- (29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.
- (30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.
- (31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions

of law and do not constitute a reprimand, but which may address any or all of the following:

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

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

#### **R156-1-103. Authority - Purpose.**

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

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

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



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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

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

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

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

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55,

by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

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

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

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

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

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

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

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n), (p)(ii) and (iii), (q)(ii) and (iii), (r)(ii) and (iii), and R156-46b-202(2)(b)(iii).

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

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

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

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

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

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as

otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

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

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m),(o),(r)(i), (s), and (t), and R156-46b-202(2)(b) through (d), however resolved, including memorandums of understanding and stipulated settlements;

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

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

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

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

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

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

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

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

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

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings

under Subsections R156-46b-202(2)(b) through (d) as required by Subsection 58-55-103(1)(b)(iv).

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

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d),(h),(n), (p)(i) and (q)(i).

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

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

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

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

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

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

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

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

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on

transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) evidence presented indicating that restricting or

monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

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

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

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

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

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

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

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

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

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division.

Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

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

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

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

TABLE  
RENEWAL DATES

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

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

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

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

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

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made

toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

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

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

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

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

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

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

(2) Except as provided in Subsection(4), renewal notices

shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

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

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

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

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

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

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

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

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

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

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

education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division

between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

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

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

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

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

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

(c) pay the established license fee for a new applicant for licensure.

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

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

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

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

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

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

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

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

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

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

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the

specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

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

(2) pay the established license renewal fee and the reinstatement fee;

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

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

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

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

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

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

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

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

**R156-1-310. Cheating on Examinations.****(1) Policy.**

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

**(2) Cheating Defined.**

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

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

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

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

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

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

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

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

**(3) Action Upon Detection of Cheating.**

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

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

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

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

(e) Upon determination that an applicant has cheated on an

examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

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

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

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

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

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

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

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

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

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

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

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

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

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

**R156-1-404d. Diversion - Procedures.**

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

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

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

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary



action against the licensee in accordance with Section 58-1-108.

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

**R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.**

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

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

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

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

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

**R156-1-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

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

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

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

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

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

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

**R156-1-502. Administrative Penalties.**

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
SECOND OFFENSE	
58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(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.

**R156-1-503. Reporting Disciplinary Action.**

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

**R156-1-506. Supervision of Cosmetic Medical Procedures.**

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

- (1) the appropriate standards of care for performing nonablative cosmetic medical procedures;
- (2) physiology of the skin;
- (3) skin typing and analysis;
- (4) skin conditions, disorders, and diseases;
- (5) pre and post procedure care;
- (6) infection control;
- (7) laser and light physics training;
- (8) laser technologies and applications;
- (9) safety and maintenance of lasers;
- (10) cosmetic medical procedures an individual is permitted to perform under this title;
- (11) recognition and appropriate management of complications from a procedure; and
- (12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following

organizations:

- (a) American Heart Association;
- (b) American Red Cross or its affiliates; or
- (c) American Safety and Health Institute.

**KEY: diversion programs, licensing, occupational licensing, supervision**

**November 26, 2012**

**58-1-106(1)(a)**

**Notice of Continuation January 5, 2012**

**58-1-308**

**58-1-501(4)**

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

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

**R156-17b-102. Definitions.**

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

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

(2) "Analytical laboratory":

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

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

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

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

(5) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.

(6) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

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

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

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

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

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

(12) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a

daily or weekly drug container to facilitate the patient taking the correct medication.

(13) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

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

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

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

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

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

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

(17) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

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

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

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

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

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

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

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

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

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

(a) "Caution: federal law prohibits dispensing without

prescription";

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

(c) "Rx only".

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

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

(26) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

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

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

(29) "NAPLEX" means North American Pharmacy Licensing Examination.

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

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

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

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

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

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

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

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

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

(33) "PIC", as used in this rule, means the pharmacist-in-charge.

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

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

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

(37) "Refill" means to fill again.

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

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

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

(41) "Supervisor" means a licensed pharmacist in good standing with the Division.

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

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

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

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

(46) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 35-NF 30), 2012 edition, which is official from May 1, 2012 through Supplement 2, dated December 1, 2012, which is hereby adopted and incorporated by reference.

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

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

(a) intracompany sales or transfers;

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

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

(d) the distribution of drug samples;

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

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

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

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

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

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

**R156-17b-103. Authority - Purpose.**

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

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

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

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

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

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

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

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

(4) In accordance with Subsection 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

**R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.**

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

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

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

- (a) closed door;
  - (b) hospital clinic pharmacy;
  - (c) methadone clinics;
  - (d) nuclear;
  - (e) branch;
  - (f) hospice facility pharmacy;
  - (g) veterinarian pharmaceutical facility;
  - (h) pharmaceutical administration facility; and
  - (i) sterile product preparation facility.
- (j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

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

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

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

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

- (a) analytical laboratory;
- (b) animal euthanasia;
- (c) durable medical equipment provider;
- (d) human clinical investigational drug research facility;

and

- (e) medical gas provider.

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

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

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

**R156-17b-303a. Qualifications for Licensure - Education Requirements.**

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

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

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

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

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

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

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

- (i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
- (ii) hygiene and aseptic techniques;
- (iii) terminology, abbreviations and symbols;
- (iv) pharmaceutical calculations;
- (v) identification of drugs by trade and generic names, and therapeutic classifications;
- (vi) filling of orders and prescriptions including packaging and labeling;
- (vii) ordering, restocking, and maintaining drug inventory;

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

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

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

(d) The training program shall include:

(i) at least 180 but not more than 360 hours of directly supervised practical training as determined appropriate by the supervisor; and

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that address:

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

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

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

(i) An individual who has completed an approved program, but did not seek licensure within the one-year time frame shall:

(A) complete a minimum of an additional 180 but not more than 360 hours of directly supervised refresher practice, as determined by the supervisor, in a pharmacy approved by the Board if it has been more than six months since having practiced in a pharmacy setting and less than two years since the initial start date of the program; or

(B) repeat an approved pharmacy technician training program in entirety if it has been greater than two years since the initial start date of the program.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than six months but less than two years and wishes to renew that license must complete a minimum of 180 but not more than 360 hours of directly supervised refresher practice, as determined appropriate by the supervisor, in a pharmacy approved by the Board.

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

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

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

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

collaboration with the Board;

(c) has passed and maintained current PTCB or ExCPT certification; and

(d) has passed the Utah Pharmacy Technician Law and Rule Examination.

#### **R156-17b-303b. Qualifications for Licensure - Pharmacy Internship Standards.**

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

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

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

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

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

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

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

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

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

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

#### **R156-17b-303c. Qualifications for Licensure - Examinations.**

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

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

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

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retake.

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

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

(a) the Utah Pharmacy Technician Law and Rule Examination, taken as part of the application for licensure, with a minimum passing score of 88 percent; and

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

(5) A graduate of a foreign pharmacy school shall obtain

a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

**R156-17b-303d. Qualifications for Licensure - Meet with the Board.**

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

**R156-17b-304. Temporary Licensure.**

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

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

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

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

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

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

(a) six months from the date of issuance;

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

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

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

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

**R156-17b-305. Licensure - Pharmacist by Endorsement.**

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

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

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

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

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

**R156-17b-307. Qualifications for Licensure - Criminal Background Checks.**

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and

management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

(a) the PIC;

(b) the PIC's immediate supervisor;

(c) the senior person in charge of the facility in which the pharmacy is located;

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and

(e) owners of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

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

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

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

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

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

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

**R156-17b-309. Continuing Education.**

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

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

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

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

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

(a) for pharmacists:

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

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

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

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

(b) for pharmacy technicians:

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

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

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

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

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

(a) Pharmacists:

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

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

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

(b) Pharmacy Technicians:

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

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

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

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

**R156-17b-310. Exemption from Licensure - Dispensing of Cosmetic or Injectable Weight Loss Drugs.**

(1) A cosmetic drug that can be dispensed by a prescribing practitioner or optometrist in accordance with Subsection 58-17b-309 is limited to Latisse.

(2) An injectable weight loss drug that can be dispensed by a prescribing practitioner in accordance with Subsection 58-17b-309 is limited to human chorionic gonadotropin.

(3) In accordance with Subsection 58-17b-309(4)(c), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(4) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), shall keep inventory records for each drug dispensed and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a prescribing practitioner or optometrist include:

(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

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

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

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

(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Section 58-17b-309; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Section 58-17b-309 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

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

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

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

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (5).

(5) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), shall include the following elements when providing patient counseling:

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

(b) the dosage form, dose, route of administration and



duration of drug therapy;

- (c) intended use of the drug and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescription refill information;
- (i) action to be taken in the event of a missed dose;
- (j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
- (k) the date after which the prescription should not be taken or used, or the beyond use date.

(6) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that must be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2) provides that the storage space shall be:

- (a) kept in an area that is well lighted, well ventilated, clean and sanitary;
- (b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;
- (c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;
- (d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and
- (e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's or optometrist's office or clinic is closed.

(7) In accordance with Subsection 58-17b-309(5), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2) requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.

(8) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner or optometrist, include whether:

- (a)(i) the drug has FDA approval;
- (ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or
- (B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;
- (b) the drug has been approved for self administration by the FDA;
- (c) the stability of the drug is adequate for the supply being dispensed; and
- (d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

#### **R156-17b-401. Disciplinary Proceedings.**

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

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

#### **R156-17b-402. Administrative Penalties.**

In accordance with Subsection 58-17b-401(6) and Sections

58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

- (1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$5,000
- (2) failing to deliver the license or permit or certificate to the Division upon demand, in violation 58-17b-501(2):
  - initial offense: \$100 - \$1,000
  - subsequent offense(s): \$500 - \$2,000
- (3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of 58-17b-501(3)(a):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,000 - \$10,000
- (4) conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of 58-17b-501(3)(b):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,000 - \$10,000
- (5) buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):
  - initial offense: \$1,000 - \$5,000
  - subsequent offense(s): \$10,000
- (6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):
  - initial offense: \$100 - \$500
  - subsequent offense(s): \$200 - \$1,000
- (7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,000 - \$10,000
- (8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,000 - \$10,000
- (9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,500 - \$10,000
- (10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):
  - initial offense: \$500 - \$1,000
  - subsequent offense(s): \$1,500 - \$5,000
- (11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):
  - initial offense: \$500 - \$2,000
  - subsequent offense(s): \$2,500 - \$10,000
- (12) selling, dispensing or otherwise trafficking in

prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000

subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in

violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$2,000 - \$10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(27) preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,500 - \$5,000

(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: \$250 - \$500

subsequent offense(s): \$2,000 - \$10,000

(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$250 - \$500

subsequent offense(s): \$500 - \$750

(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: \$50 - \$100

subsequent offense(s): \$200 - \$300

(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):

initial offense: \$100 - \$200

subsequent offense(s): \$200 - \$500

(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,000 - \$10,000

(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(36) failing to return or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):

initial offense: \$100 - \$250

subsequent offense(s): \$300 - \$500

(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the

Division, in violation of Subsection R156-17b-502(9):

initial violation: \$50 - \$100

failure to comply within determined time: \$250 - \$500

subsequent violations: \$250 - \$500

failure to comply within established time: \$750 - \$1,000

(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: \$100 - \$250

Pharmacist subsequent offense(s): \$500 - \$2,500

Pharmacy initial offense: \$250 - \$1,000

Pharmacy subsequent offense(s): \$500 - \$5,000

(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: \$50 - \$100

Pharmacist subsequent offense(s): \$250 - \$500

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$1,000 - \$2,000

(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: \$500 - \$2,500

Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000

Pharmacy: \$2,000 per occurrence

(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000

(44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

initial offense: \$500 - \$2,000

subsequent offense(s) \$2,000 - \$10,000

(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

initial offense: \$500 - \$2,500

subsequent offense: \$5,000 - \$10,000

(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

initial offense: \$500 - \$2,000

subsequent offense: \$2,000 - \$10,000

(50) failing to update the Division within seven calendar days of any change in the email address designated for use in

self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: \$100 - \$300

Pharmacist subsequent offense(s): \$500 - \$1,000

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$500 - \$1,250

(51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(62) engaging in conduct, including the use of intoxicants,

drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(66) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(71) 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):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(72) practicing a regulated occupation or profession in, through, or with a limited liability company that 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):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the

words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(74) practicing a regulated occupation or profession in, through, or with a professional corporation that 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):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(75) using a capitalized DBA (doing-business-as name) that 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):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(76) 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 of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000

subsequent offense(s) \$5,000 - \$10,000

(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug

dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(85) 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):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(87) any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

#### **R156-17b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

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

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

(5) defaulting on a student loan;

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

(7) failing to comply with administrative inspections;

(8) failing to return or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

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

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

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

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

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

(16) failing to comply with the PIC standards as established in Section R156-17b-603;

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

(18) dispensing medication that has been discontinued by the FDA;

(19) failing to keep or report accurate records of training hours;

(20) failing to provide PIC information to the Division within 30 days of a change in PIC;

(21) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with

a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare; and

(22) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts.

#### **R156-17b-601. Operating Standards - Pharmacy Technician.**

In accordance with Subsection 58-17b-102(55), practice as a licensed pharmacy technician is defined as follows:

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

(a) receiving written prescriptions;

(b) taking refill orders;

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

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

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

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review; and

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

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

(3) Pharmacy technicians, including no more than one pharmacy technician-in-training per shift, shall have direct supervision by a pharmacist in accordance with Subsection R156-17b-603(19).

#### **R156-17b-602. Operating Standards - Pharmacy Intern.**

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

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

(1) The PIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsection 58-17b-103(1) and 58-17b-601(1), a secure email address shall be established by the PIC or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or responsible party shall notify the Division of the pharmacy's secure email address initially as follows:

(a) at the September 30, 2013 renewal for all licensees; and

(b) thereafter, on the initial application for licensure.

(3) The duties of the PIC shall include:

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

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

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

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

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

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

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

(f) education and training of pharmacy technicians;

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

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

(i) bulk compounding of drugs;

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

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

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

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

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

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

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

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

(r) assuring that all personnel working in the pharmacy have the appropriate licensure;

(s) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(t) assuring that the PIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC within 30 days of the change; and

(u) assuring with regard to the secure email address used for self-audits and pharmacy alerts that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

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

At least 14 days prior to the closing of a pharmacy, the PIC shall comply with the following:

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

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

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

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

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

(a) the date of closing; and

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

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

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

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

(4) If the pharmacy dispenses prescription drug orders:

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

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

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

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

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

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

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

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

(a) DEA registration certificate;

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

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

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

advance of the closing as allowed by the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances

including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

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

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

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

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

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

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

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

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

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

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

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

(1) meeting the following criteria:

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

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to no more than two pharmacy interns during a working shift; and

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

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

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

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

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

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

(a) stock ordering and restocking;

(b) cashiering;

- (c) billing;
  - (d) filing;
  - (e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;
  - (f) housekeeping; and
  - (g) delivering a pre-filled prescription to a patient.
- (2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.
- (3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:
- (a) all supportive personnel shall be under the supervision of a licensed pharmacist; and
  - (b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of pre-filled prescriptions as provided in Subsection (1)(g) above.
- (4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

**R156-17b-608. Reserved.**

Reserved.

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

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

- (1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.
- (2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:
- (a) full name of the patient, address, telephone number, date of birth or age and gender;
  - (b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:
    - (i) name of prescription drug;
    - (ii) strength of prescription drug;
    - (iii) quantity dispensed;
    - (iv) date of filling or refilling;
    - (v) charge for the prescription drug as dispensed to the patient; and
  - (c) any additional comments relevant to the patient's drug use.
- (3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

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

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

- (1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:
- (a) the name and description of the prescription drug;
  - (b) the dosage form, dose, route of administration and duration of drug therapy;
  - (c) intended use of the drug, when known, and expected

action;

- (d) special directions and precautions for preparation, administration and use by the patient;
  - (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
  - (f) techniques for self-monitoring drug therapy;
  - (g) proper storage;
  - (h) prescription refill information;
  - (i) action to be taken in the event of a missed dose;
  - (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
  - (k) the date after which the prescription should not be taken or used, or the beyond use date.
- (2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.
- (3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.
- (4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.
- (5) Counseling shall be:
- (a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;
  - (b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and
  - (c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.
- (6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.
- (7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:
- (a) date of the delivery;
  - (b) unique identification number of the prescription drug order;
  - (c) patient's name;
  - (d) patient's phone number or the phone number of the person picking up the prescription; and
  - (e) signature of the person picking up the prescription.
- (8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:
- (a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;
  - (b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and



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

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

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

- (a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;
- (b) collecting and reviewing patient histories;
- (c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;
- (d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and
- (e) such other patient care services as may be allowed by rule.

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

- (a) inappropriate drug utilization;
- (b) therapeutic duplication;
- (c) drug-disease contraindications;
- (d) drug-drug interactions;
- (e) incorrect drug dosage or duration of drug treatment;
- (f) drug-allergy interactions; and
- (g) clinical abuse or misuse.

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

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

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

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

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

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

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

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

exceeded. The following additional terms apply to such a transfer:

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

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

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

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

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) either:

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

(ii) the pharmacist is unable to contact the practitioner

after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

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

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

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

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

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

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

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

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

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

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

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

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

In accordance with Subsections 58-17b-102(28) and (29) and 58-17b-602(1), prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

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

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

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

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

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

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

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted

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

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

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

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

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

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

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

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

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

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

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

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

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

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

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

(iv) the date and time of the transfer.

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

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

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

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

equipment shall be clean and in good operating condition;

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

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

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

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

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

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

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

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

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

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

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

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) a sample label;
- (v) evaluation and testing requirements;
- (vi) sterilization methods, if applicable;
- (vii) specific equipment used during preparation such as specific compounding device; and
- (viii) storage requirements;

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

- (i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;
- (ii) manufacturer lot number for each component;
- (iii) component manufacturer or suitable identifying number;
- (iv) container specifications (e.g. syringe, pump cassette);
- (v) unique lot or control number assigned to batch;
- (vi) expiration date of batch prepared products;
- (vii) date of preparation;
- (viii) name, initials or electronic signature of the person or persons involved in the preparation;
- (ix) names, initials or electronic signature of the responsible pharmacist;

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

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

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

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

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

(iii) quantity;

(iv) expiration date and time, when applicable;

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

(vi) device-specific instructions, where appropriate;

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

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

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 16th Edition, October 27, 2010;

(B) manufacturer recommendations; and

(C) reliable, published research;

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

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

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

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

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

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

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

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

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

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

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

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

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

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

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

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

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

personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

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

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

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

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

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

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

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

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

(16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls must extend to the hard deck, or other measures must be taken to prevent unauthorized entry into the pharmacy.

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

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

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

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

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

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

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

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

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

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is

approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

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

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

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

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

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

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

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

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

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

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

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

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

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

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

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

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be

dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

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

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

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

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

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

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

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

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

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

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

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

(1) A nuclear pharmacy shall have the following:

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

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

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

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

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

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

(6) This rule does not prohibit:

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

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

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

(8) A nuclear pharmacy preparing sterile compounds must

follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

#### **R156-17b-614e. Class B - Hospital Pharmacy and Emergency Department Treatment.**

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The licensed facility need not be under the supervision

of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

- (a) is at least 21 years of age;
- (b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;
- (c) is employed by the applicant full time in a managerial level position;
- (d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;
- (e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and
- (f) is serving in the capacity of a designated representative for only one licensee at a time.

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

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

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

(8) All Class C pharmacies shall:

- (a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;
- (b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;
- (c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;
- (d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;
- (e) be maintained in a clean and orderly condition; and
- (f) be free from infestation by insects, rodents, birds or vermin of any kind.

(9) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

- (a) be secure from unauthorized entry;
- (b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;
- (c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;
- (d) be well lighted on the outside perimeter;
- (e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and
- (f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(10) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(11) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

- (i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;
- (ii) name and address of each location from which the product was shipped, if different from the owner's;
- (iii) transaction dates;
- (iv) name of the prescription drug;
- (v) dosage form and strength of the prescription drug;
- (vi) size of the container;
- (vii) number of containers;
- (viii) lot number of the prescription drug;
- (ix) name of the manufacturer of the finished dose form;

and

- (x) National Drug Code (NDC) number.
- (b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are

contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate

federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

**R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.**

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

**R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

**R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.**

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

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

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

**R156-17b-617c. Class E Pharmacy Operating Standards - Animal Euthanasia.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal euthanasia facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal euthanasia facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;



(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

**R156-17b-617d. Class E Pharmacy Operating Standards-Durable Medical Equipment.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

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

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

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

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

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such a way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

**R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

**R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.**

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

**R156-17b-618. Change in Ownership or Location.**

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

**R156-17b-619. Operating Standards - Third Party Payors. Reserved.**

**R156-17b-620. Operating Standards - Automated Pharmacy System.**

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial

numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an

automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

#### **R156-17b-621. Operating Standards - Pharmacist Administration - Training.**

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

**KEY: pharmacists, licensing, pharmacies  
November 29, 2012**

**Notice of Continuation February 23, 2010**

**58-17b-101**

**58-17b-601(1)**

**58-37-1**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.****R156-24b. Physical Therapy Practice Act Rule.****R156-24b-101. Title.**

This rule is known as the "Physical Therapy Practice Act Rule".

**R156-24b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

- (a) accredited by CAPTE; or
- (b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(7) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

**R156-24b-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 24b.

**R156-24b-104. Organization - Relationship to Rule R156-1.**

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

**R156-24b-302a. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a

credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

- (a) an associates, bachelors, or masters program; or
- (b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

**R156-24b-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT.

(2) In accordance with Section 58-1-309 and Subsections 58-24b-302(1)(d), (2)(d) and (3)(d), each applicant for licensure as a physical therapist or physical therapist assistant, including endorsement applicants, shall pass all questions on the open book, take home Utah Physical Therapy Law and Rule Examination.

(3) An applicant for licensure as a physical therapist or a physical therapist assistant must have completed the education requirements set forth in Section R156-24b-302, or be enrolled in the final semester of a CAPTE accredited program, in order to be eligible to sit for the examination required for Utah licensure as set forth in Subsection (1) above.

**R156-24b-303a. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24b is established by rule in Section R156-1-308a.

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

**R156-24b-303b. Continuing Education.**

(1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

- (i) patient/physical therapist relationships;
- (ii) confidentiality;
- (iii) documentation;
- (iv) charging and coding;
- (v) compliance with state and/or federal laws that impact the practice of physical therapy; and

(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(e) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

- (i) lecturing or instructing a course;
- (ii) in a post-professional doctorate or transitional doctorate program; or
- (iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The course shall be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the course.

(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:

- (A) department in-service;
- (B) seminar;
- (C) lecture;
- (D) conference;
- (E) training session;
- (F) webinar;
- (G) internet course;
- (H) distance learning course;
- (I) journal club;
- (J) authoring of an article or textbook publication;
- (K) poster platform presentation;
- (L) specialty certification through the American Board of Physical Therapy Specialties;
- (M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;
- (N) post-professional doctorate from a CAPTE accredited program;
- (O) lecturing or instructing a continuing education course;

or

- (P) study of a scholarly peer-reviewed journal article.
- (ii) The following limits apply to the number of contact

hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in courses meeting these requirements;

(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;

(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;

(G) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(I) a maximum of 12 contact hours for authoring a textbook chapter;

(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(K) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(L) a maximum of six contact hours for authoring a poster or platform presentation.

(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association, organization, or facility involved in the practice of physical therapy; or
- (iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

- (A) the date of the course;
- (B) the name of the course provider;
- (C) the name of the instructor;
- (D) the course title;
- (E) the number of contact hours of continuing education credit; and
- (F) the course objectives.

(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:

- (A) the dates of study or research;
  - (B) the title of the article, textbook chapter, poster, or platform presentation;
  - (C) an abstract of the article, textbook chapter, poster, or platform presentation;
  - (D) the number of contact hours of continuing education credit; and
  - (E) the objectives of the self-study course.
- (6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

#### **R156-24b-305. Temporary Licensure.**

- (1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary physical therapist or temporary physical therapist assistant license to a person who meets all qualifications for licensure as a physical therapist or physical therapist assistant except for the passing of the required examination, if the applicant:
- (a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;
  - (b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;
  - (c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a physical therapist with an active, non-temporary license; and
  - (d) has registered to take the required licensure examination.
- (2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:
- (a) six months from the date of issuance;
  - (b) the date upon which the Division receives notice from the examination agency that the individual has failed the examination twice; or
  - (c) the date upon which the Division issues the individual full licensure.
- (3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

#### **R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.**

In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:

- (1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;
- (2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and
- (3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full

reinstatement of the license.

#### **R156-24b-502. Unprofessional Conduct.**

Unprofessional conduct includes:

- (1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended July 2010, which is hereby adopted and incorporated by reference;
- (2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended November 2010, which is hereby adopted and incorporated by reference;
- (3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;
- (4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended November 2010, which is hereby adopted and incorporated by reference; and
- (5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference.

#### **R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.**

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

- (1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and
- (2) a physical therapist shall provide treatment to a patient at least every tenth treatment day but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

**KEY: licensing, physical therapy, physical therapist, physical therapist assistant**

**November 13, 2012**

**58-24b-101  
Notice of Continuation November 15, 2011 58-1-106(1)(a)  
58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-37. Utah Controlled Substances Act Rule.**  
**R156-37-101. Title.**

This rule is known as the "Utah Controlled Substances Act Rule."

**R156-37-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or this rule:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

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

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

**R156-37-103. Purpose - Authority.**

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the Division to administer Title 58, Chapter 37.

**R156-37-104. Organization - Relationship to Rule R156-1.**

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

**R156-37-301. License Classifications - Restrictions.**

(1) Consistent with the provisions of law, the Division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

- (a) pharmacist;
- (b) optometrist;
- (c) podiatric physician;
- (d) dentist;
- (e) osteopathic physician and surgeon;
- (f) physician and surgeon;
- (g) physician assistant;
- (h) veterinarian;

(i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;

- (j) certified nurse midwife;
- (k) naturopathic physician;

(l) Class A pharmacy-retail operations located in Utah;

(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:

- (i) closed door;
- (ii) hospital clinic pharmacy;
- (iii) methadone clinics;
- (iv) nuclear;
- (v) branch;
- (vi) hospice facility pharmacy;
- (vii) veterinarian pharmaceutical facility;
- (viii) pharmaceutical administration facility; and
- (ix) sterile product preparation facility.

(n) Class C pharmacy located in Utah engaged in:

- (i) manufacturing;
- (ii) producing;
- (iii) wholesaling; and
- (iv) distributing.

(o) Class D Out-of-state mail order pharmacies.

(p) Class E pharmacy including:

- (i) medical gases providers; and
- (ii) analytical laboratories.

(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the Division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the Division.

**R156-37-302. Qualifications for Licensure - Application Requirements.**

(1) An applicant for a controlled substance license shall:

(a) submit an application in a form as prescribed by the Division; and

(b) shall pay the required fee as established by the Division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall:

(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or

(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):

(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or

(ii) other activity approved by the Division in collaboration with the appropriate board.

(3) The Division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the Division may assign the application to a qualified and appropriate licensing board for review and recommendation to the Division with respect to issuance of a license.

**R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.**

The Division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

**R156-37-304. Qualifications for Licensure - Examinations.**

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the Division on the subject of controlled substance laws.

**R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.**

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58,

## Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

**R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.**

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

**R156-37-402. Continuing Professional Education for Controlled Substance Prescribers.**

In accordance with Section 58-37-6.5, qualified continuing professional education requirements for controlled substance prescribers are further established as follows:

(1) All licensed controlled substance prescribers shall complete four hours of qualified continuing professional education during each two year period of licensure.

(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

(3) Continuing education under this section shall:

(a) be prepared and presented by individuals who are qualified by education, training and experience to provide the controlled substance prescriber continuing education;

(b) have a method of verification of attendance and a post course knowledge assessment or examination; and

(c) teach content as set forth in Subsection 58-37-6.5(2).

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

(a) continuing education shall be presented by an organization accredited to provide continuing medical education as set forth in Subsection 58-37-6.5(1)(b)(ii) and be approved as set forth in Subsection 58-37-6.5(1)(b)(iii); and

(b) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.

**R156-37-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule

II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

**R156-37-601. Access to Records, Facilities, and Inventory.**

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, this rule or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and this rule or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

**R156-37-602. Records.**

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the Division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically

so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

**R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.**

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance, each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a

Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the Division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

**R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.**

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;



(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

#### **R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.**

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

#### **R156-37-606. Disposal of Controlled Substances.**

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the Division on submission to the Division to the attention of Chief Investigator

of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a Division authorized agent as is specifically instructed by the Division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the Division or its agents for inspection for a period of five years.

#### **R156-37-607. Surrender of Suspended or Revoked License.**

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the Division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

#### **R156-37-608. Herbal Products.**

The Division shall not apply the provisions of the Controlled Substance Act or this rule in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

#### **R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.**

(1) In accordance with Subsection 58-37f-203(1)(c), the format in which the information required under Section 58-37f-203 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact disc (CD);

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer method, including but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the Division and receives prior approval.

(3) The Division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) As of October 1, 2008, each pharmacy or pharmacy group shall submit all data collected during the preceding seven days at least once per week. If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled. If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The Division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the Division including:

(a) the pharmacy name;

(b) NABP number;

- (c) the period of time covered by each submission of data;
- (d) the number of prescriptions in the submission;
- (e) the submitting pharmacist's signature attesting to the accuracy of the report; and
- (f) the date the submission was prepared.

**R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.**

(1) In accordance with Subsection 58-37f-801(8), the information required under Section 58-37f-203 shall be submitted to the Division's database manager by licensees designated by the Division to participate in the real time reporting pilot program in the following formats:

- (a) electronic data via telephone modem;
- (b) electronic data stored on floppy disk or compact discs (CD);
- (c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;
- (d) electronic data sent via a secured internet transfer methods, including, but not limited to, FTP site transfer and HyperSend; or
- (e) any other electronic method preapproved by the database manager.

(2) Each pharmacy or pharmacy group shall enter and submit data required under Section 58-37f-203 on a daily basis each day that the pharmacy or pharmacy group is open for business or the data reporting entity of the pharmacy or pharmacy group is open for business.

(3) The format for submission to the database shall be in accordance with the uniform formatting developed by the American Society for Automation in Pharmacy System (ASAP). The Division may approve alternative formats.

(4) The pharmacist-in-charge of each reporting pharmacy or pharmacy group shall be responsible for compliance with this rule.

(5) In accordance with Subsection 58-37f-801(1)(a), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the database based upon information available at the time of dispensing to the ultimate user is eligible and may participate in the Real Time Pilot Program.

**R156-37-609b. Controlled Substance Database - Limitations on Access to Real Time Database Information - Individuals Allowed to Access - Standards and Procedures for Access to Real Time Pilot Program.**

(1) In accordance with Subsection 58-37f-801(8), access to information contained in the controlled substance database is limited to individuals who are designated by the Division to participate in the real time pilot program, as follows:

- (a) personnel employed by federal, state and local law enforcement agencies;
- (b) pharmacists licensed to dispense controlled substances in Utah;
- (c) practitioners licensed to prescribe controlled substances in Utah; and
- (d) employees of the Department of Health who have previously been approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program.

(2) All individuals who are granted access to information in the controlled substance database via the real time pilot program shall provide any documentation requested by the Division's database manager to confirm the individual's identity. The individual will then be provided a username, password, and PIN number by which the individual will access the information contained in the database. Pursuant to Subsections 58-37f-

601(1), (2) and (3), it is unlawful for an authorized user to allow another individual to use the authorized user's assigned username, password and PIN number.

(3) Personnel employed by federal, state, and local law enforcement agencies may access only information related to a current investigation involving controlled substances being conducted by that agency.

(4) Pharmacists licensed to dispense controlled substances in Utah may access only information related specifically to a current patient to whom that pharmacist is dispensing or is considering dispensing any controlled substance.

(5) Practitioners licensed to prescribe controlled substances in Utah may access only information related specifically to a current patient of the practitioner, to whom the practitioner is prescribing or is considering prescribing any controlled substance.

(6) Employees of the Department of Health who have been previously approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program may access only information in order to conduct scientific studies to evaluate opioid use and opioid-related morbidity and ways to reduce deaths and other harm from improper or risky prescribing and dispensing practices as codified in Section 26-1-36.

**R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.**

(1) In accordance with Subsections 58-37f-301(1)(a) and (b), the Division director shall designate in writing those individuals within the Division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37f-201(6)(c), 58-37f-203(3)(b), 58-37f-301(1)(b), and 58-37f-301(2)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37f-201(6).

(4) Any individual may request information in the database relating to that individual's controlled substances receipt history. An individual may not request or receive an accounting of persons or entities that have requested or received information about the individual. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual's controlled substance receipt history under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name,

home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted including a research protocol for the project and a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

Notice of Continuation February 21, 2012

58-37-6(1)(a)  
58-37f-301(1)

**KEY: controlled substances, licensing, controlled substance database**

November 26, 2012

58-1-106(1)(a)

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-40. Recreational Therapy Practice Act Rule.**  
**R156-40-101. Title.**

This rule is known as the "Recreational Therapy Practice Act Rule".

**R156-40-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or this rule:

(1) "Approved graduate degree", as used in Subsection 58-40-302(2)(a), means an earned graduate (Masters, Ed.D., or Ph.D.) degree in recreational therapy or a graduate degree with an approved emphasis in recreational therapy, which includes:

(a) a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in therapeutic recreation and/or recreational therapy;

(b) a minimum of 24 semester hours or 32 quarter hours of supportive coursework as outlined by the January 2012 NCTRC Certification Standards, Part I, which are incorporated by reference; and

(c)(i) an approved practicum which includes a minimum 480 hour, 12 consecutive week field placement experience in recreational therapy services that uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference, under the supervision of an onsite field placement supervisor who is licensed in Utah as a TRS or MTRS; and

(ii) if the practicum is conducted outside Utah, the supervisor must be certified by NCTRC as a CTRS and meet NCTRC standards for field placement supervision. This practicum must be verified on an official university transcript.

(2) "Approved emphasis, option, or concentration in therapeutic recreation or recreational therapy", as used in Subsection 58-40-302(3)(a)(ii), means an emphasis, option or concentration posted on the transcript that meets the January 2012 NCTRC Certification Standards, Part I, which are incorporated by reference, including:

(a) a minimum of 18 semester or 24 quarter hours of therapeutic recreation and general recreation content coursework with no less than a minimum of 12 semester or 16 quarter hours in therapeutic recreation, consisting of a minimum of four three-credit hour courses;

(b) a total of 18 semester or 24 quarter hours of support coursework with a minimum of:

(i) three semester hours or three quarter hours coursework in the content area of anatomy and physiology;

(ii) three semester hours or three quarter hours coursework in the content area of abnormal psychology; and

(iii) three semester hours or three quarter hours coursework in the content area of human growth and development across the lifespan. The remaining semester hours or quarter hours of coursework must be fulfilled in the content area of "human service" as defined by the NCTRC; and

(c)(i) a minimum 480 hour, 12 week field placement experience in therapeutic recreation services that uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference, under the supervision of an onsite field placement supervisor who is both state licensed as a TRS or MTRS and NCTRC CTRS certified and meets the standards for field placement supervision; and

(ii) if the practicum is conducted outside Utah, the supervisor must be certified by NCTRC as a CTRS and meet NCTRC standards for field placement supervision. This practicum must be verified on an official university transcript.

(3) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the NCTRC.

(4) "Full-time, on-site", as used in Subsections 58-40-601(3)(a) and (b), means an individual who is employed on the

premises with the hiring agency for a minimum of 30 hours per week.

(5) "Maintain the ongoing documentation", as used in Subsection 58-40-601(3)(b), means:

(a) documenting the ongoing treatment or intervention provided to clients according to the treatment plan; and

(b) providing review of patient status according to federal, state, and agency regulations.

(6) "MTRS" means a person licensed as a master therapeutic recreation specialist.

(7) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(8) "Supervision", as used in Section 58-40-601, means full-time, on-site oversight by an MTRS or TRS of the recreational therapy services offered.

(9) "Supervision of a temporary TRS", as used in Subsection R156-40-302f(1)(d), means that the MTRS or TRS supervisor is responsible for the recreational therapy activities performed by the temporary TRS and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(10) "TRS" means a person licensed as a therapeutic recreation specialist.

(11) "TRT" means a person licensed as a therapeutic recreation technician.

(12) "Written plan of operation", as used in Subsection 58-40-102(6)(b)(viii), means a comprehensive management plan that outlines recreational therapy services that, at a minimum, includes:

(a) vision and mission statement;

(b) policy and procedures;

(c) assessment protocol;

(d) treatment and/or intervention plan;

(e) scope of care; and

(f) personnel management.

(13) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

**R156-40-103. 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 40.

**R156-40-104. 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.

**R156-40-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Section 58-40-302, the educational requirements for licensure include:

(1) An MTRS applicant shall:

(a) complete an approved graduate degree as defined in R156-40-102(1);

(b) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(c) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS on an official university transcript.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by an MTRS, as required by Subsection 58-40-302(4)(b)(i), which shall consist of 90 hours of structured

education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

- (i) theories and concepts of recreational therapy;
- (ii) the therapeutic recreation process;
- (iii) characteristics of illness and disability and their effects on leisure;
- (iv) medical and psychiatric terminology including psychiatric, pharmacology, gerontology, and abbreviations;
- (v) ethics;
- (vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and
- (vii) health and safety.

**R156-40-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Section 58-40-302, the experience requirements for licensure include:

- (1) An MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-302(2)(b), which means an individual must either work as a TRS in Utah in a paid position practicing recreational therapy or work outside of Utah as a CTRS in a paid position practicing recreational therapy.
- (2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-302(3)(b), which means a practicum verified on the degree transcript.
- (3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-302(4)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor, that includes:
  - (a) a minimum of 20 hours of direct face to face supervision of programming, documentation and treatment intervention by the MTRS or TRS supervisor;
  - (b) training in recreational therapy or therapeutic recreation process as defined in Subsection 58-40-102(5) and (6);
  - (c) interdisciplinary contact;
  - (d) administration contact; and
  - (e) community relations.

**R156-40-302c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-40-302(2)(c), (3)(c) and (4)(d), applicants for licensure shall pass the following examinations:

- (1) Applicants for licensure as an MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as an CTRS.
- (2) Applicants for licensure as a TRT shall pass both the Therapeutic Recreation Technician Theory Examination with a minimum score of 70% and the Therapeutic Recreation Technician Laws and Rules Exam with a minimum score of 75%.
- (3) Applicants for licensure as a TRT who fail the Therapeutic Recreation Technician Theory Examination three consecutive times must repeat the educational coursework.

**R156-40-302d. Time Limitation for TRT applicants.**

- (1) In accordance with Subsection 58-40-302(4) and Sections R156-40-302a, R156-40-302b and R156-40-302c, a TRT applicant shall pass the examinations and apply for licensure after completion of the 125 practicum hours required under Subsection R156-40-302b(3) and must do so within the same nine month period referred to in that Subsection.
- (2) A TRT applicant who does not complete the education, practicum and examinations within nine months is not eligible to be employed as a TRT in a therapeutic recreation department.

- (3) A TRT student who does not seek licensure within two years after completion of the education course shall retake the education, practicum and pass the examination prior to applying for licensure.

**R156-40-302e. Qualifications for Supervision.**

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-601(3), means that the MTRS or TRS supervisor is responsible for:

- (1) providing on-site training, observation, direction and evaluation to include:
  - (a) reviewing the recreational therapy intervention to be performed by the TRT as defined by the treatment plan;
  - (b) demonstrating as evidenced by the signature of the MTRS or TRS in the patient chart review and evaluation of ongoing documentation;
  - (c) reviewing and observing the recreational therapy program according to administrative and governing regulations; and
  - (d) reviewing and evaluating adherence to the standards of the profession.

**R156-40-302f. Qualifications for Temporary License as a TRS - Supervision Required.**

- (1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:
  - (a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) meet all the requirements for licensure, except passing the NCTRC examination; and
  - (d) practice recreational therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).
- (2) The temporary license shall be issued for a period not to exceed 120 days to allow the applicant to pass the NCTRC examination.
- (3) The temporary license will not be renewed or extended for any purpose.

**R156-40-303. Renewal Cycle - Procedures.**

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308a(1).
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

**R156-40-304. Continuing Education.**

In accordance with Section 58-40-304, qualified continuing education requirements are established as follows:

- (1) All licensed MTRS, TRS, and TRT's shall complete 20 hours of qualified continuing education or provide a current CTRS certification during each two-year period of licensure.
- (2) Qualified continuing education hours for licensees who have not been licensed for the entire two-year period will be prorated from the date of licensure.
- (3) Continuing education under this section shall:
  - (a) be relevant to the licensee's professional practice;
  - (b) be prepared and presented by individuals who are qualified by education, training and experience to provide recreational therapy continuing education; and
  - (c) have a method of verification of attendance and completion.
- (4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by, or under the sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges; or

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of recreational therapy;

(b) a maximum of ten hours per two-year period may be recognized for teaching continuing education courses relevant to recreational therapy;

(c) a maximum of 12 hours per two-year period may be recognized for continuing education that is provided via the internet and/or webinar which provides a certificate of completion;

(d) a maximum of six hours per two-year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing;

(e) a maximum of four hours per two-year period may be recognized for CPR and first aid certification through a live course, not online; and

(f) a maximum of six hours per two-year period may be recognized for publications in an article, journal, newsletter or other professional publications.

(5) If properly documented that a licensee is subject to circumstances which prevent that licensee from meeting the continuing education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing education for a period of six years and if requested, demonstrate the licensee meets requirements under this section.

#### **R156-40-502. Unprofessional Conduct.**

Unprofessional conduct includes:

(1) failing to establish and maintain professional boundaries with a patient or former patient;

(2) exploiting a current and/or former patient for personal gain;

(3) failing as an MTRS/TRS to ensure the student TRT completes the minimum required education and experience prior to working with patients;

(4) failing as an MTRS/TRS to ensure the student TRT is competent to provide recreational therapy services when signing the education and experience verification; and

(5) failing to abide by the provisions of the American Therapeutic Recreation Association (ATRA) Code of Ethics, November 2009, which is incorporated by reference.

**KEY: licensing, recreational therapy, recreation therapy**  
**November 26, 2012** 58-40-101  
**Notice of Continuation August 15, 2011** 58-1-106(1)(a)  
58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.****R156-60. Mental Health Professional Practice Act Rule.****R156-60-101. Title.**

This rule is known as the "Mental Health Professional Practice Act Rule."

**R156-60-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, or the ICD-10-CM published by Medicode, the American Psychiatric Association, or Practice Management Information Corporation in conjunction with the World Health Organization.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(4) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

**R156-60-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60.

**R156-60-104. 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.

**KEY: licensing, mental health, therapists****November 13, 2012****58-1-106(1)(a)****Notice of Continuation July 27, 2009****58-1-202(1)(a)****58-60-101**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60c. Clinical Mental Health Counselor Licensing Act Rule.**

**R156-60c-101. Title.**

This rule is known as the "Clinical Mental Health Counselor Licensing Act Rule".

**R156-60c-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Internship" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

(2) "Practicum" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60c-502.

**R156-60c-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 60, Part 4.

**R156-60c-104. Organization - Relationship to Rule R156-1.**

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

**R156-60c-302a. Qualifications for Licensure - Education Requirements.**

(1) Pursuant to Subsection 58-60-405(1)(d)(i), an applicant for licensure as a clinical mental health counselor shall:

(a) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours completed as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or counselor education and supervision from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); or

(b)(i) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or an equivalent field from a program affiliated with an institution that has accreditation that is recognized by the Council for Higher Education Accreditation (CHEA).

(ii) A program under Subsection (1)(b)(i) shall include the following graduate level course work:

(A) a minimum of two semester or three quarter hours in professional orientation and ethical practice based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);

(B) a minimum of two semester or three quarter hours in social and cultural diversity;

(C) a minimum of two semester or three quarter hours in group work;

(D) a minimum of two semester or three quarter hours in human growth and development across the life span;

(E) a minimum of two semester or three quarter hours in career development;

(F) a minimum of six semester or eight quarter hours in helping relationships including theory and skills in counseling and psychotherapy with individuals, couples or families;

(G) a minimum of two semester or three quarter hours in substance use disorders or addictive or compulsive behaviors;

(H) a minimum of two semester or three quarter hours in psychometric test and measurement theory;

(I) a minimum of four semester or six quarter hours in assessment of mental status including the appraisal of DSM maladaptive and psychopathological behavior;

(J) a minimum of two semester or three quarter hours in research and evaluation in clinical mental health counseling;

(K) a minimum of four semester or six quarter hours of internship or practicum as defined in Subsection R156-60c-102(1) or (2) that includes combined completion of at least 1,000 hours of supervised clinical training of which at least 400 hours shall be in providing mental health therapy directly to clients as defined in Subsection 58-60-102(7); and

(L) a minimum of 34 semester or 52 quarter hours of course work related to the practice of counseling of which no more than six semester or eight quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required hours in this subsection.

**R156-60c-302b. Qualifications for Licensure - Experience Requirements.**

(1) The clinical mental health counselor and mental health therapy training qualifying an applicant for licensure as a clinical mental health counselor under Subsections 58-60-405(1)(e) and (f) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is licensed as a licensed associate clinical mental health counselor or licensed associate clinical mental health counselor extern;

(c) be completed while the applicant is an employee, as defined in Subsection R156-60-102(3), of a public or private agency engaged in mental health therapy under the supervision of a qualified clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, physician, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(2) An applicant for licensure as a clinical mental health counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the clinical mental health counselor and mental health therapy training requirements under Subsection (1) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(1)(e) and (f), and Subsections R156-60c-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

**R156-60c-302c. Qualifications for Licensure - Examination Requirements.**

(1) Under Subsection 58-60-405(1)(g), an applicant for licensure as a clinical mental health counselor must pass the following examinations:

(a) the National Counseling Examination of the National



Board for Certified Counselors; and

(b) the National Clinical Mental Health Counseling Examination of the National Board for Certified Counselors.

**R156-60c-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a.

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

**R156-60c-304. Continuing Education.**

(1) There is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a clinical mental health counselor and licensed associate clinical mental health counselor.

(2) During each two year period commencing October 1st of each even numbered year, a clinical mental health counselor or licensed associate clinical mental health counselor shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of six hours must be completed in ethics/law.

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

(4) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education regarding clinical mental health counseling; and

(c) have a method of verification of attendance and completion.

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

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

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education courses in the field of clinical mental health counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of 10 hours per two year period may be recognized for distance learning, clinical readings, or internet-based courses directly related to practice as a clinical mental health counselor unless otherwise approved by the Division.

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

(7) A licensee who documents he is engaged in full-time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**R156-60c-306. License Reinstatement - Requirements.**

In addition to the requirements established in Section

R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the Board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a clinical mental health counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical training as an associate clinical mental health counselor extern;

(3) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a clinical mental health counselor;

(4) pass the National Clinical Mental Health Counseling Examination if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a clinical mental health counselor; and

(5) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a clinical mental health counselor.

**R156-60c-401. Requirements to be Qualified as a Clinical Mental Health Counselor Training Supervisor.**

In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a clinical mental health counselor training supervisor, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed;

(2) have engaged in lawful practice of mental health therapy as a physician, clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist for not fewer than 4,000 hours in a period of not less than two years prior to beginning supervision activities; and

(3) be employed by or have a contract with the mental health agency that employs the supervisee, but not be employed by the supervisee, nor be employed by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.

**R156-60c-402. Duties and Responsibilities of a Supervisor of Clinical Mental Health Counselor.**

The duties and responsibilities of a licensee providing supervision to an individual completing supervised clinical mental health counselor training requirements for licensure as a clinical mental health counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of clinical mental health counseling and report violations to the Division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised clinical mental health counselor training, including the supervisor's evaluation of the supervisee's competence in the practice of clinical mental health counseling;

(9) supervise not more than three supervisees at any given time unless approved by the Board and Division; and

(10) assure each supervisee is licensed as a licensed associate clinical mental health counselor or licensed associate clinical mental health counselor extern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).

#### **R156-60c-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-401(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the counselor and that individual;

(11) engaging in physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) using a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failing to cooperate with the Division during an investigation; and

(19) failing to abide by the provisions of the American Mental Health Counselors Association Code of Ethics, last amended March 2010, which is adopted and incorporated by reference.

#### **KEY: licensing, counselors, mental health, clinical mental health counselor**

**November 13, 2012**

**Notice of Continuation January 7, 2010**

**58-60-401**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R277. Education, Administration.****R277-112. Prohibiting Discrimination in the Public Schools.****R277-112-1. Definitions.**

"Board" means the Utah State Board of Education.

**R277-112-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board.

B. The purpose of this rule is to establish standards prohibiting discrimination in the public school system, specifically in programs under the supervision of the Board.

**R277-112-3. Standards.**

A. The Board does not advocate, permit, or practice discrimination on the basis of race, creed, color, national origin, religion, age, sex, or disability. This rule incorporates by reference the following:

(1) the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400;

(2) State Board of Education Special Education Rules, August 2007;

(3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance;

(4) Section 5 of the Americans with Disabilities Act Amendments of 2008, which prohibits discrimination on the basis of disability.

(5) Title IV of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000c et seq., which provides standards and training for educators relative to the desegregation of schools receiving Federal financial assistance;

(6) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance;

(7) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., which prohibits discrimination in employment based on race, color, religion, sex, or national origin in programs and activities receiving Federal financial assistance;

(8) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance;

(9) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., which prohibits discrimination on the basis of race, color, religion, sex, or national origin, and also prohibits discrimination against an individual because of his or her association with another individual of a particular race, color, religion, sex, or national origin. Title VII also covers types of wage discrimination not covered by the Equal Pay Act;

(10) Equal Pay Act of 1963, 29 U.S.C. 206 et. seq., as amended in the Fair Labor Standards Act, which prohibits sex discrimination in pay under an equal work standard;

(11) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance;

B. The Board shall take action consistent with:

(1) all regulations, guidelines, and standards lawfully adopted under the statutes named in R277-112-3A(1) through R277-112-3A(8) and effective as of October 11, 2011;

(2) all state laws prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or disability and effective as of October 11, 2011.

C. All programs, activities, schools, institutions, and local education agencies under the general control and supervision of

the Board shall adopt policies and rules prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or disability.

**KEY: educational policy, civil rights  
November 8, 2012  
Notice of Continuation August 1, 2012**

**Art X Sec 3**

**R277. Education, Administration.****R277-420. Aiding Financially Distressed School Districts.****R277-420-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Interfund transfer" means a transaction which withdraws money from one fund and places it in another without recourse. Interfund transfers are regulated by statute and Board rules. Interfund transfers do not include interfund loans in which money is temporarily withdrawn from a fund with full obligation for repayment during the fiscal year.
- C. "School district," for purposes of this rule, means school district under the direction of the local board of education.
- D. "State Superintendent" means the State Superintendent of Public Instruction. For purposes of this rule, the Board's designee is the State Superintendent.
- E. "USOE" means the Utah State Office of Education.
- F. "Without recourse" means there is no obligation to return withdrawn money to the fund from which it was transferred.

**KEY: education finance****November 8, 2012****Notice of Continuation September 14, 2012****53A-19-105****53A-1-401(3)****53A-19-103****R277-420-2. Authority and Purpose.**

- A. This rule is authorized by Section 53A-19-105(5) which requires the Board to develop standards for defining and aiding financially distressed school districts, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to specify the eligibility requirements for and the procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts.

**R277-420-3. Eligibility.**

To qualify as a financially distressed school district, a school district shall meet all of the following requirements:

- A. Have a deficit of three percent or more in its year end unappropriated maintenance and operation fund balance following a reduction for any amount in an undistributed reserve.
- B. Be unable to meet its financial obligations in a timely manner.
- C. Be unable to reduce the maintenance and operation deficit by twenty-five percent in its budget for the next year.
- D. Have made reasonable, local efforts to eliminate the deficit.
- E. Be financially incapable of meeting statewide educational standards adopted by the Board.
- F. Have a deficit resulting from circumstances not subject to administrative decisions. This judgment shall be made following an on-site visit and consultation with the school district and local school board by USOE staff.

**R277-420-4. Procedures for Making Interfund Transfers.**

- A. A local school board applying to qualify for an interfund transfer under this rule shall request that the USOE visit the school district, conduct an audit, and assist the local school board and district staff in developing a plan to eliminate the deficit.
- B. The school district shall meet the eligibility requirements of R277-420-3 and be approved as a financially distressed school district by the Board or its designee.
- C. A school district designated as financially distressed may make nonrecurring or nonroutine interfund transfers to the maintenance and operation fund upon the approval of the Board or its designee.
- D. The interfund transfer shall be established by the school district under the direction of the local school board in an undistributed reserve account consistent with Section 53A-19-103.

**R277. Education, Administration.****R277-423. Delivery of Flow Through Money.****R277-423-1. Definitions.**

A. "Bank transfer" means a monthly deposit of money to each LEA's bank as authorized by the USOE via the State Treasurer and agent bank.

B. "Board" means the Utah State Board of Education.

C. "Flow through money" means state funds appropriated under the state-supported minimum school program and federal funds, both of which are administered by the Board and disbursed to individual LEAs.

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. "State-supported minimum school program" means school programs for kindergarten, elementary, and high schools which may be operated and maintained for the total of costs set by the Legislature annually.

F. "USOE" means the Utah State Office of Education.

**R277-423-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board 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 describe the process whereby flow through money is disbursed to LEAs.

**R277-423-3. Procedures.**

A. An estimate of the amount of each LEA's share of state funds appropriated for the state-supported minimum school program is made by the USOE annually before June 30. The estimate shall indicate, for each LEA, its estimated number of units and the cost of its state-supported minimum school programs. One-twelfth of the LEA's share of the state funds constitutes monthly payments. The estimates are revised periodically to accurately represent one-twelfth of the LEA's share of the state funds. A final statement is made with LEAs following the end of the fiscal year.

B. State and federal funds shall be transferred to LEAs by means of bank transfers.

(1) The USOE shall prepare a summary listing funds for each individual program and total funds for each LEA which shall be mailed electronically to each LEA. It shall also prepare a summary listing the designated bank and amount of funds for each LEA on the electronic funds transfer memo for the state designated agent bank and the State Treasurer.

(2) The USOE shall, in a timely manner, complete the necessary accounting work for the transfer of funds and deliver the request to the State Department of Finance. The USOE shall coordinate the letter of credit for federal funds withdrawal for deposit with the State Treasurer in accordance with the cash management agreement with the US Treasury.

(3) The State Department of Finance shall complete necessary accounting work to have funds authorized for release by the State Treasurer's office.

(4) The State Treasurer's office shall release funds in accordance with the electronic funds transfer memo to the state designated agent bank in time to ensure deposit of funds in each LEA's designated bank by 11:00 a.m. on the last working day of each month.

(5) The state designated agent bank shall deposit funds to each LEA's designated account by 11:00 a.m. on the last working day of each month.

(6) LEAs shall keep bank account transfer information accurate and current to enable the monthly transfers of funds to be completed in a timely manner; all information shall be sent

to the USOE audit/finance specialist in the School Finance and Statistics Section at the USOE.

C. When a disruption occurs in the procedure specified in Subsection 3(B), the USOE shall coordinate transfer procedures in a timely manner.

D. The USOE may administer state and federal flow through money for state institutions and private and parochial schools. It prepares and processes vouchers for the funds and forwards warrant requests authorizing the State Treasurer to make payment to the identified recipient.

**R277-423-4. Reports.**

An LEA that fails to meet deadlines for submitting to the USOE reports that are necessary to calculate its share of state funds or that fails to meet deadlines for the annual audit report may have its state funds withheld until an acceptable report is filed with the USOE in accordance with R277-484, Data Standards.

**KEY: education finance  
November 8, 2012**

**Art X Sec 3  
Notice of Continuation September 14, 2012 53A-1-401(3)**

**R277. Education, Administration.****R277-424. Indirect Costs for State Programs.****R277-424-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Direct costs" means costs which can be easily, obviously, and conveniently identified by the Utah State Office of Education with a specific program.

C. "Indirect costs" means the costs of providing indirect services. Restricted and non-restricted indirect costs are defined in R277-425, "Budgeting, Accounting and Auditing Handbook for Utah School Districts."

D. "Indirect Services" means services which cannot be identified with a specific program.

E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

F. "Non-restricted indirect cost rate" means a rate assigned to each LEA annually, based on the ratio of non-restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

G. "Restricted indirect cost rate" means a rate assigned to each LEA annually based on the ratio of restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

H. "Unallowable costs" means expenditures directly attributable to governance. Governance includes salaries and expenditures of the office of the superintendent, the governing board, election expenses, and expenditures for fringe benefits which are associated with unallowable salary expenditures.

**R277-424-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to adopt rules for financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish Board standards for claiming indirect costs for state programs.

**R277-424-3. Standards.**

A(1) LEAs may charge indirect costs to state funded programs.

(2) The Board shall not authorize or pay indirect costs to higher education institutions for state funded contractual work.

B. Prior to the beginning of each fiscal year, the Utah State Office of Education publishes a schedule of the indirect cost rates for state programs. The schedule is developed from data gathered from the Annual Financial Reports submitted by the LEAs. Each program schedule shows whether or not the restricted or non-restricted indirect cost rate applies and whether or not indirect costs are allowable or applicable.

C. Recovery of indirect costs is subject to availability of funds. If a combination of direct and indirect costs exceeds funds available, then the LEA may not recover the total cost of the project or program. Recovery of indirect costs for state programs is optional for LEAs.

D. Indirect costs for state programs may be recovered only to the extent that direct costs were incurred. The indirect cost rate is applied to the amount expended, not to the total grant, in order to determine the amount for indirect costs.

**KEY: education finance****November 8, 2012****Notice of Continuation September 14, 2012 53A-1-402(1)(f)****Art X Sec 3  
53A-1-401(3)**

**R277. Education, Administration.****R277-454. Construction Management of School Building Projects.****R277-454-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "CM" means an individual designated as a construction manager. The CM may be an architect, engineer, general contractor, or other professional consultant. It may also be an entity which is referred to as a construction management firm. The CM works as the agent of the owner of the construction project. The CM, at the discretion of the owner, may assist in the development and implementation of any or all of the predesign, design, bidding, construction, and occupancy stages of the construction project. The CM is responsible for the effective, orderly, and acceptable completion of the construction project.

C. "Construction management" means a contractual and professional working relationship between the owner of a construction project and a CM.

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

**R277-454-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-20-103 which requires the Board to prepare an annual school plant capital outlay report of all LEAs, which includes information on the number and size of building projects completed and under construction.

B. The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.

**R277-454-3. Standards.**

A. A construction management contract shall clearly specify the duties of the CM with respect to the building project.

B. An LEA shall bid each component part of the building project in accordance with advertising, public opening, performance bond, payment bond, and other statutory requirements.

**KEY: educational facilities, education finance****November 8, 2012****Notice of Continuation September 14, 2012****Art X Sec 3****53A-1-401(3)****53A-20-103**

**R277. Education, Administration.****R277-515. Utah Educator Standards.****R277-515-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

C. "Educator or professional educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license. The "professional" denotes that the individual holds or is seeking a Utah educator license as opposed to a paraprofessional or a volunteer or unlicensed teacher in a classroom.

D. "Felony offense" means any offense for which an individual is charged with a first, second or third degree felony under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63G, Chapter 6, or any other statute in the Utah Code establishing a felony.

E. "Illegal drug(s)" means a substance included in Schedules I, II, III, IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substance analog.

F. "Illegal sexual conduct" means any conduct proscribed under the Utah Criminal Code, Sections 76-5-401 through 406, Section 76-5a-1-4, and Section 76-9-704 through 704.

G. "Licensing discipline" means sanctions ranging from an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measures, for violation of professional educator standards.

H. "Misdemeanor offense" means any offense for which an individual is charged with a Class A, B, or C misdemeanor under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63G, Chapter 6, or any other statute in the Utah Code establishing a misdemeanor.

I. "Plea in abeyance" means a plea of guilty or no contest which is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

J. "School-related activity" means any event, activity or program occurring at the school before, during or after school hours or which students attend at a remote location as representatives of the school or with the school's authorization, or both.

K. "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

L. "Utah Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.

M. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

N. "Utah Professional Practices Advisory Commission (Commission)" means a commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

O. "USOE" means the Utah State Office of Education.

P. "Weapon(s)" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

**R277-515-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6 which provides all laws related to educator licensing and professional practices, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents. The rule also recognizes that licensed public school educators are professionals and, as such, should share common professional standards, expectations and role model responsibilities. The rule distinguishes behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

**R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.**

A. The professional educator is responsible for compliance with federal, state, and local laws.

B. The professional educator shall familiarize himself with professional ethics and is responsible for compliance with applicable professional standards.

C. Failing to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall not be convicted of any felony or misdemeanor offense which adversely affects the individual's ability to perform assigned duties and carry out the responsibilities of the profession, including role model responsibilities.

(2) shall not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(3) shall not commit any act of cruelty to children or any criminal offense involving children;

(4) shall not be convicted of a stalking crime;

(5) shall not possess or distribute illegal drugs, or be convicted of any crime related to illegal drugs, including prescription drugs not specifically prescribed for the individual;

(6) shall not be convicted of any illegal sexual conduct, including offenses that are plea bargained to lesser offenses from an initial sexual offense;

(7) shall not be subject to a diversion agreement specific to sex-related or drug-related offenses, plea in abeyance, court-imposed probation or court supervision related to criminal charges which could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(8) shall not provide to students or allow students, under the educator's supervision or control to consume alcoholic beverages or unauthorized drugs;

(9) shall not attend school or a school-related activity in an assigned supervisory capacity, while possessing, using, or under the influence of alcohol or illegal drugs;

(10) shall not intentionally exceed the prescribed dosages of prescription medications while at school or a school-related activity;

(11) shall cooperate in providing all relevant information and evidence to the proper authorities in the course of an investigation by a law enforcement agency or by Child Protective Services regarding potential criminal activity. However, an educator shall be entitled to decline to give evidence against himself in any such investigation if the same may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(12) shall report suspected child abuse or neglect to law



enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with Board rules and school district policies regarding the reporting of suspected child abuse;

(13) shall strictly adhere to state laws regarding the possession of firearms, while on school property or at school-sponsored activities, and enforce district policies related to student access to or possession of weapons;

(14) shall not solicit, encourage or consummate an inappropriate relationship, written, verbal, or physical, with a student or minor;

(15) shall not participate in sexual, physical, or emotional harassment or any combination toward any public school-age student or colleague, nor knowingly allow harassment toward students or colleagues;

(16) shall not make inappropriate contact in any communication-written, verbal, or electronic-with minor, student, or colleague, regardless of age or location;

(17) shall not interfere or discourage students' or colleagues' legitimate exercise of political and civil rights, acting consistent with law and school district/school policies;

(18) shall provide accurate and complete information in required evaluations of himself, other educators, or students, as directed, consistent with the law;

(19) shall be forthcoming with accurate and complete information to appropriate authorities regarding known educator misconduct which could adversely impact performance of professional responsibilities, including role model responsibilities, by himself or others;

(20) shall provide accurate and complete information required for licensure, transfer, or employment purposes; and

(21) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure.

(22) shall notify the USOE at the time of application for licensure of past license disciplinary action or license discipline from other jurisdictions;

(23) shall notify the USOE honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(24) shall provide complete and accurate information during an official inquiry or investigation by school district, state, or law enforcement personnel.

D. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer.

(1) An educator shall not exclude a student from participating in any program, or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and shall not engage in conduct that would encourage a student(s) to develop a prejudice on these grounds or any other, consistent with the law.

(2) An educator shall maintain confidentiality concerning a student unless revealing confidential information to authorized persons serves the best interest of the student and serves a lawful purpose, consistent with federal and state Family Educational Rights and Privacy Acts (FERPA).

(3) Consistent with the Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and Board rules, a professional educator:

(a) shall not accept bonuses or incentives from vendors, potential vendors, or gifts from parents of students, or students where there may be the appearance of a conflict of interest or impropriety;

(b) shall not accept or give gifts to students that would

suggest or further an inappropriate relationship;

(c) shall not accept or give gifts to colleagues that are inappropriate or further the appearance of impropriety;

(d) may accept donations from students, parents, and businesses donating specifically and strictly to benefit students;

(e) may accept, but not solicit, nominal appropriate personal gifts for birthdays, holidays and teacher appreciation occasions, consistent with school or school district policies and the Utah Public Officers' and Employees' Ethics Act;

(f) shall not use his position or influence to:

(i) solicit colleagues, students or parents or students to purchase equipment, supplies, or services from the educator or participate in activities that financially benefit the educator or unless approved in writing by the local school board or governing board;

(ii) promote athletic camps, summer leagues, travel opportunities, or other outside instructional opportunities from which the educator receives personal remuneration, and that involve students in the educator's school system, unless approved in writing consistent with local school board or governing board policy and Board rule; and

(g) shall not use school property, facilities, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

#### **R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.**

A. A professional educator maintains a positive and safe learning environment for students, and works toward meeting educational standards required by law.

B. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall take prompt and appropriate action to prevent harassment or discriminatory conduct towards students or school employees that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(2) shall resolve disciplinary problems according to law, school board policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(3) shall supervise students appropriately at school and school-related activities, home or away, consistent with district policy and building procedures and the age of the students;

(4) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety or learning;

(5) shall demonstrate honesty and integrity by strictly adhering to all state and district instructions and protocols in managing and administering standardized tests to students consistent with Section 53A-1-608 and R277-473;

(a) shall cooperate in good faith with required student assessments;

(b) shall encourage students' best efforts in all assessments;

(c) shall submit and include all required student information and assessments, as required by state law and State Board of Education rules; and

(d) shall attend training and cooperate with assessment training and assessment directives at all levels.

(6) shall not use or attempt to use school district or school computers or information systems in violation of the school district's acceptable use policy for employees or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(7) shall not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

C. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall

be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer: A professional educator:

- (1) shall demonstrate respect for diverse perspectives, ideas, and opinions and encourage contributions from a broad spectrum of school and community sources, including communities whose heritage language is not English;
- (2) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;
- (3) shall maintain a positive and safe learning environment for students;
- (4) shall work toward meeting educational standards required by law;
- (5) shall teach the objectives contained in the Utah Core Curriculum;
- (6) shall not distort or alter subject matter from the Core in a manner inconsistent with the law and shall use instructional time effectively; and
- (7) shall use instructional time effectively consistent with school and school district policies.

**R277-515-5. Professional Educator Responsibility for Compliance with School District Policies.**

A. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator:

- (1) understands and follows Board rules and local board policies
- (2) understands and follows school and administrative policies and procedures;
- (3) understands and respects appropriate boundaries, established by ethical rules and school policies and directives, in teaching, supervising and interacting with students and colleagues; and
- (4) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with school and school district policy.

B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:

- (1) shall resolve grievances with students, colleagues, school community members, and parents professionally, with civility, and in accordance with school district/charter school policies; and
- (2) shall follow school district/charter school policies for collecting money from students, accounting for all money collected, and not commingling any school funds with personal funds.

**R277-515-6. Professional Educator Conduct.**

A. A professional educator exhibits integrity and honesty in relationships with school and district administrators and personnel.

B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:

- (1) shall communicate professionally and with civility with colleagues, school and community specialists, administrators and other personnel;
- (2) maintains a professional and appropriate relationship and demeanor with students, colleagues and school community members and parents;
- (3) shall not promote personal opinions, personal issues, or political positions as part of the instructional process in a

manner inconsistent with law; expresses personal opinions professionally and responsibly in the community served by the school;

- (4) shall comply with school and district policies, supervisory directives, and generally-accepted professional standards regarding appropriate dress and grooming at school and school-related events;
- (5) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;
- (6) shall honor all contracts for professional services;
- (7) shall perform all services required or directed by the educator's contract with the school district, school, or charter school with professionalism consistent with local policies and Board rules; and
- (8) shall recruit other educators for employment in another position only within district timelines and guidelines.

**R277-515-7. Violations of Professional Ethics.**

A. This rule establishes standards of ethical decorum and behavior for licensed educators in Utah.

B. Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against professional educators.

C. The Board and USOE shall adhere to the provisions of this rule in licensing and disciplining licensed Utah educators.

D. Reporting and employment provisions related to professional ethics are provided in:

- (1) Section 53A-3-410;
- (2) Section 53A-6-501;
- (3) Section 53A-11-403; and
- (4) R277-514-5.

**KEY: educators, professional, standards**

**August 7, 2008**

**Notice of Continuation November 15, 2012 53A-1-402(1)(a)**

**Art X Sec 3**

**53A-6**

**53A-1-401(3)**

**R277. Education, Administration.****R277-531. Public Educator Evaluation Requirements (PEER).****R277-531-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.
- C. "Formative evaluation" means evaluations that provide educators with feedback on how to improve their performance.
- D. "Instructional quality data" means data acquired through observation of educator's instructional practices.
- E. "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses an LEA evaluation program.
- F. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and school districts, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- G. "LEA Educator Evaluation Program" means an LEA's process, policies and procedures for evaluating educators' performance according to their various assignments; those policies and procedures shall align with R277-531.
- H. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.
- I. "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.
- J. "Summative evaluation" means evaluations that are used to make annual decisions or ratings of educator performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.
- K. "USOE" means the Utah State Office of Education.
- L. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.
- M. "Utah Effective Teaching Standards" means the teaching standards identified and adopted in R277-530.
- N. "Utah Educational Leadership Standards" means the standards for educational leadership identified and adopted in R277-530.
- O. "Valid and reliable measurement tool(s)" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

**R277-531-2. Authority and Purpose.**

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services, and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional LEA determined components and procedures to ensure the availability of data about educator effectiveness are available. The process shall focus on the improvement of high quality instruction and improved student achievement. Additionally, the process shall include common data that can be aggregated and disaggregated to inform Board and LEA decisions about retention, preparation, recruitment, improved professional development practices and ensure LEAs engage in a consistent

process statewide of educator evaluation.

**R277-531-3. Public Educator Evaluation Framework.**

- A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components of an LEA's educator evaluation system.
- B. Alignment with Board expectations and standards and required consistency of LEA policies with evaluation process:
- (1) An LEA educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.
  - (2) An LEA evaluation system shall establish and articulate performance expectations individually for all licensed LEA educators.
  - (3) An LEA evaluation system shall include valid and reliable measurement tools including, at a minimum:
    - (a) observations of instructional quality;
    - (b) evidence of student growth;
    - (c) parent and student input; and
    - (d) other indicators as determined by the LEA.
  - (4) An LEA evaluation system shall provide a summative yearly rating of educator performance using uniform statewide terminology and definitions. An LEA evaluation system shall include summative and formative components.
  - (5) An LEA evaluation system shall direct the revision or alignment of all related LEA policies, as necessary, to be consistent with the LEA Educator Evaluation System.
- C. Valid and reliable tools:
- (1) An LEA evaluation system shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements:
    - (a) employ a variety of measurement tools;
    - (b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;
    - (c) provide evaluation for non-instructional licensed educators and administrators;
  - (2) shall provide for both formative and summative evaluation data;
  - (3) data gathered from tools may be considered by an LEA to inform decisions about employment and professional development.
- D. Discussion, collaboration and protection of confidentiality with educators regarding evaluation process:
- (1) An LEA evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process.
  - (2) An LEA evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences.
  - (3) An LEA evaluation system shall protect personal data gathered in the evaluation process.
- E. Support for instructional improvement:
- (1) An LEA evaluation system shall assess professional development needs of educators.
  - (2) An LEA evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the LEA level which may include providing educators with mentors, coaches, specialists in effective instruction and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.
- F. Records and documentation of required educator evaluation information:
- (1) An LEA evaluation system shall include the evaluation of all licensed educators at least once a year.
  - (2) An LEA evaluation system shall provide at least an annual rating for each licensed educator, including teachers,

school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(3) An LEA evaluation system shall provide for the evaluation of all provisional educators, as defined by the LEA under Section 53A-8a-405, at least twice yearly.

(4) An LEA evaluation system shall include the following specific educator performance criteria:

(a) instructional quality measures to be determined by the LEA;

(b) student growth score to be completely phased in by July 1, 2015; and

(c) other measures as determined by the LEA including data gathered from student/parent input.

(5) the Board shall determine weightings for specific educator performance criteria to be used in the LEA's evaluation system.

(6) An LEA evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) An LEA evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) An LEA evaluation system shall include a review or appeals process for an educator to challenge the conclusions of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

G. An LEA may include additional components in an evaluation system.

H. A local board of education shall review and approve an LEA's proposed evaluation system in an open meeting prior to the local board's submission to the Board for review and approval.

**R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.**

A. The Board shall establish a state evaluation advisory committee to provide ongoing review and support for LEAs as they develop and implement evaluation systems consistent with the law and this Rule. The Committee shall:

(1) analyze LEA evaluation data for purposes of:

(a) reporting;

(b) assessing instructional improvement; and

(c) assessing student achievement.

(2) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement;

(3) review LEA educator evaluation plans for alignment with Board requirements.

B. The USOE, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

C. The USOE shall evaluate and recommend tools and measures for use by LEAs as they develop and initiate their local educator evaluation systems.

D. The USOE shall provide professional development and technical support to LEAs to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

**R277-531-5. Implementation.**

A. Each LEA shall have an educator evaluation committee in place by October 2011.

B. Each LEA shall design the required evaluation program, including pilot programs as desired.

C. Each LEA shall continue to report educator

effectiveness data to the USOE in the UCA.

D. Implementation shall be in place for the 2013-2014 school year.

E. Board directed student growth measures shall be implemented as part of the LEA evaluation system by the 2014-2015 school year.

**KEY: educators, evaluations, requirements  
November 8, 2012**

**Art X Sec 3  
53A-1-402(1)(a)(i)  
53A-1-401(3)**

**R307. Environmental Quality, Air Quality.****R307-101. General Requirements.****R307-101-1. Foreword.**

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

**R307-101-2. Definitions.**

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and

regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will

achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the

source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) use of an alternative fuel or raw material by a source:
  - (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
  - (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under

any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;

- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period,

not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be



treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in

widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or

from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as solvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV-C) or threshold limit value - time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly

flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s)(1), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

### **R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.**

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2011.

### **KEY: air pollution, definitions November 8, 2012**

**Notice of Continuation July 2, 2009**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-102. General Requirements: Broadly Applicable Requirements.****R307-102-1. Air Pollution Prohibited; Periodic Reports Required.**

(1) Emission of air contaminants in sufficient quantities to cause air pollution as defined in R307-101-2 is prohibited. The State statute provides for penalties up to \$50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

(2) Periodic Reports and Availability of Information. The owner or operator of any stationary air contaminant source in Utah shall furnish to the director the periodic reports required under Section 19-2-104(1)(c) and any other information as the director may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

**R307-102-2. Confidentiality of Information.**

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the director shall so treat such information. If no claim is made at the time of submission, the director may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the director shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

**R307-102-3. Reserved.**

Reserved.

**R307-102-4. Variances Authorized.**

(1) Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

(a) to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the director and approved by the Board.

(b) to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

(c) to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

(2) Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

**R307-102-5. No Reduction in Pay.**

In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

**R307-102-6. Emissions Standards.**

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

**KEY: air pollution, confidentiality of information, variances**  
**November 8, 2012** **19-2-104**

**Notice of Continuation February 8, 2008** **19-2-113**

**R307. Environmental Quality, Air Quality.****R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.****R307-123-1. Authorization and Purpose.**

This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403. R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a). Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

**R307-123-2. Definitions.**

Definitions. The following additional definitions apply to R307-123.

"Certified by the director" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

**R307-123-3. Demonstration of Eligibility for OEM Vehicles.**

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer

invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

**R307-123-4. Demonstration of Eligibility for Vehicles Converted to Clean Fuels.**

To demonstrate that a conversion of a motor vehicle fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) If the vehicle is registered within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved station showing that the converted clean fuel vehicle meets all county emissions requirements for all installed fuel systems; or

(b) in all other areas of the State a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) proof that the conversion is certified by the director;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration, which shows that the vehicle is registered in the applicant's name.

**R307-123-5. Demonstration of Eligibility for Retrofitted Vehicles.**

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) each of the following:

(a) the retrofit equipment manufacturer,

(b) the retrofit equipment model number,

(c) the date of the retrofit, and

(d) the name, address, and phone number of the person that retrofitted the vehicle;

(5) proof that the retrofit is certified by the director;

(6) an original or copy of the purchase order, customer invoice, or receipt; and

(7) a copy of the current Utah vehicle registration.

**KEY: air pollution, alternative fuels, grants and loans, motor vehicles**  
**November 8, 2012**

19-2-104

19-1-401

59-7-605

59-10-1009

**R307. Environmental Quality, Air Quality.****R307-135. Enforcement Response Policy for Asbestos Hazard Emergency Response Act.****R307-135-1. AHERA Penalty Policy Definitions.**

The following additional definitions apply to R307-135:

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools.

"Local Education Agency" means:

(1) any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381),

(2) the owner of any nonpublic, nonprofit elementary or secondary school building, or

(3) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"Other Person" means any nonprofit school that does not own its own building, or any employee or designated person of a Local Education Agency who violates the AHERA regulations, or any person other than the Local Education Agency who:

(1) inspects the property of Local Education Agencies for asbestos-containing building materials for the purpose of the Local Education Agency's AHERA inspection requirements;

(2) prepares management plans for the purpose of the Local Education Agency's AHERA management plan requirements;

(3) designs or conducts response actions at Local Education Agency properties;

(4) analyzes bulk samples or air samples for the purpose of the compliance of the Local Education Agency with the AHERA requirements; or

(5) contracts with the Local Education Agency to perform any other AHERA-related function.

"Private Nonprofit School" means any nonpublic, nonprofit elementary or secondary school.

**R307-135-2. Assessing Penalties Against a Local Education Agency.**

(1) A Notice of Noncompliance may be issued to a Local Education Agency for a violation of AHERA. After a Notice of Noncompliance has been issued, the Local Education Agency must submit documentation to the director within 60 days demonstrating that the violations listed in the Notice of Noncompliance have been corrected. Failure to submit complete documentation within 60 days is a violation of this rule.

(2) A Notice of Violation may be issued to a Local Education Agency for:

(a) first-time level 1 or 2 violations as specified in R307-135-5,

(b) subsequent level 3, 4, 5, or 6 violations as specified in R307-135-5,

(c) failure to inspect and submit a management plan within 60 days of issuance of a Notice of Noncompliance,

(d) not conducting an inspection and/or submitting a plan by the statutory deadline after non-compliance has been verified by an authorized agent of the director.

(3) In accordance with Section 19-2-115, and with Section 207(a) of AHERA, the maximum penalty that may be assessed against a Local Education Agency for any and all violations in a single school building is \$5,000 per day. Total penalties for a single school building which exceed \$5,000 per day are to be reduced to \$5,000 per day.

(4) Violations of AHERA by a Local Education Agency will be considered one-day violations, except that, in cases in which a Local Education Agency violates AHERA regulations

after a Notice of Violation has been issued, additional penalties may be assessed on a per-day basis and injunctive relief may be sought.

(5) The director may use discretion in assessing penalties. The base penalty shall be determined by assessing the circumstances and the extent of the violation, as specified in R307-135-5.

(6) In determining adjustments to a base penalty assessed against a Local Education Agency in accordance with R307-135-5, the director may consider the culpability of the violator, including any history of non-compliance; ability to pay the penalty; ability to continue to provide educational services to the community; and the violator's good faith efforts to comply or lack of good faith.

(a) If it can be shown that the Local Education Agency did not know of its AHERA responsibilities, or if the violations are voluntarily disclosed by the Local Education Agency, or if the Local Education Agency did not have control over the violations, the penalty may be reduced by 25%.

(b) If violations are voluntarily disclosed by the Local Education Agency within 30 days of discovery, the penalty will be reduced by an additional 25%.

(c) If it can be shown that the Local Education Agency made reasonable efforts to assure compliance, the Notice of Violation may be eliminated.

(d) If the Local Education Agency has a demonstrated history of violations, the penalty may be increased.

(e) The attitude of the violator may be considered in increasing or decreasing the penalty by 15%.

(7) Civil penalties collected against a Local Education Agency shall be used by that Local Education Agency for the purposes of complying with AHERA. The director will defer payment of the penalty until the Local Education Agency has completed the requirements in the compliance schedule by the deadline in the schedule. When the compliance schedule expires, the Local Education Agency must present the director with a strict accounting of the cost of compliance in the form of notarized receipts, an independent accounting, or equivalent proof.

(8) If the cost of compliance equals or exceeds the amount of the civil penalty, the Local Education Agency will not be required to pay any money. If the cost of compliance is less than the amount of the penalty, the Local Education Agency shall pay the difference to the Asbestos Trust Fund.

**R307-135-3. Assessing Penalties Against Other Persons.**

(1) In accordance with Section 19-2-115, the director may assess and collect civil penalties of up to \$10,000 per day for each violation from Other Persons who violate the AHERA regulations. The penalties will be issued against the company, if there is one. Generally penalties which exceed \$10,000 per day in a single school building are to be reduced to \$10,000 per day.

(2) Criminal penalties for willful violations of up to \$25,000 may be assessed against Other Persons. All penalties assessed against Other Persons are to be sent to the Division for the State General Fund.

(3) The base penalty shall be determined by assessing the circumstances and the extent of the violation, as specified in R307-135-5.

(4) The director may show discretion in making adjustments to the gravity-based penalty considering factors such as culpability of the Other Person, including a history of such violations; the Other Person's ability to pay; the Other Person's ability to stay in business; and other matters as justice may require, such as voluntary disclosure and attitude of the violator.

(5) The maximum penalty that may be assessed is \$10,000, per day, per violation, except that a knowing or willful violation

of the regulations may be assessed at \$25,000, per day.

(6) If the Other Person continues to violate after a Notice of Violation has been issued, the Notice of Violation may be amended and additional penalties assessed. Injunctive relief, criminal penalties and per-day penalties may also be pursued.

(7) Penalties for a first-time violation may be remitted if the Other Person corrects the violations in all schools in which the Other Person has and may have violated. In some cases of unknowing violations by an Other Person who is not typically involved with asbestos, some or all of the penalty may be remitted if the Other Person takes mandatory AHERA training.

**R307-135-4. Penalties Against Private Nonprofit Schools.**

(1) The owner of the building that contains a private nonprofit elementary school is considered a Local Education Agency. If the private non-profit school does not own its own building, it is considered an Other Person and will be treated as such.

(2) The school is liable for up to \$5,000, per day, per violation of AHERA, and penalties may be returned to the school for the purposes of complying with AHERA. The owner of the private nonprofit school building will be assessed penalties in the same manner as other Local Education Agencies.

**R307-135-5. AHERA Enforcement Response Policy Penalties.**

(1) Gravity Based Penalty. A base penalty based on the gravity of the violation will be determined by addressing the circumstances and the extent of the violation. Table 1 specifies penalties for Local Education agencies and Table 2 specifies penalties for Other Persons.

(2) Circumstances. The circumstances reflect the probability that harm will result from a particular violation. The probability of harm increases as the potential for environmental harm or asbestos exposure to school children and employees increases. Tables 1 and 2 provide the following levels for measuring circumstances:

- (a) Levels 1 and 2 (High): It is probable that the violation will cause harm.
- (b) Levels 3 and 4 (Medium): There is a significant chance the violation will cause harm.
- (c) Levels 5 and 6 (Low): There is a small chance the violation will result in harm.

(3) The circumstance levels that are to be attached for each provision of AHERA may be found in Appendix A (Local Education Agency violations) and Appendix B (Other Person violations) of EPA's AHERA Enforcement Response Policy.

(4) Extent. The extent reflects the potential harm caused by a violation. Harm is determined by the quantity of asbestos-containing building materials involved in the violation through inspection, removal, enclosure, encapsulation, or repair in violation of the regulation.

(5) For the purposes of this Enforcement Response Policy, the extent levels are specified in Tables 1 and 2 and are as follows:

- (a) Major: violations involving more than 3,000 square feet or 1,000 linear feet of ACBM.
- (b) Significant: violations involving more than 160 square feet or 260 linear feet but less than or equal to 3,000 square feet or 1,000 linear feet.
- (c) Minor: violations involving less than or equal to 160 square feet or 260 linear feet.

(6) In situations where the quantity of asbestos involved in the AHERA violation cannot be readily determined, the base penalty will generally be calculated using the major extent category.

TABLE 1

BASE PENALTY FOR LOCAL EDUCATION AGENCIES

CIRCUMSTANCES (Levels)	EXTENT		
	A MAJOR	B SIGNIFICANT	C MINOR
High Range	1 \$5,000	\$3,400	\$1,000
	2 \$4,000	\$2,400	\$ 600
Mid Range	3 \$3,000	\$2,000	\$ 300*
	4 \$2,000	\$1,200	\$ 200*
Low Range	5 \$1,000	\$ 600	\$ 100*
	6 \$ 400*	\$ 260*	\$ 40*

\*Issue Notices of Noncompliance for the first citation of violations that fall within these cells if that is the only violation

TABLE 2

BASE PENALTY FOR OTHER PERSONS

CIRCUMSTANCES (Levels)	EXTENT		
	A MAJOR	B SIGNIFICANT	C MINOR
High Range	1 \$10,000	\$6,800	\$2,000
	2 \$ 8,000	\$4,800	\$1,200
Mid Range	3 \$ 6,000	\$4,000	\$ 600
	4 \$ 4,000	\$2,800	\$ 400
Low Range	5 \$ 2,000	\$1,200	\$ 200
	6 \$ 800	\$ 520	\$ 80

**R307-135-6. Injunctive Relief.**

(1) In accordance with Sections 19-2-116 and 117, the director may seek injunctive relief:

- (a) in cases of imminent and substantial endangerment to human health and environment;
- (b) where a Local Education Agency's non-compliance will significantly undermine the intent of the AHERA regulations; and
- (c) for violations including, but not limited to:
  - (i) failure or refusal to make a management plan available to the public without cost or restriction;
  - (ii) failure or refusal to conduct legally sufficient air monitoring following a response action; or
  - (iii) the initiation of a response action without accredited personnel; or
- (d) to restrain any violation of Title 19, Chapter 2 or R307 or any final order issued by the director when it appears to be necessary for the protection of health or welfare.

**R307-135-7. Criminal Penalties.**

In accordance with Section 19-2-115, knowing, willful, or continuing violations of AHERA regulation by a Local Education Agency, Local Education Agency employee, or Other Person will be referred to the Office of the Attorney General. Knowing, willful, or continuing violations may result in the issuance of a criminal penalty of \$25,000 per day, per violation for such violations.

**KEY: air pollution, hazardous pollutant, asbestos, schools  
November 8, 2012 19-2-104(d)  
Notice of Continuation February 1, 2012 19-2-115  
19-2-116  
19-2-117**

**R307. Environmental Quality, Air Quality.****R307-207. Residential Fireplaces and Solid Fuel Burning Devices.****R307-207-1. Purpose and Definition.**

R307-207 establishes emission standards for residential fireplaces and solid fuel burning devices.

"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, including, but not limited to, wood stoves, but excluding outdoor wood boilers, which are regulated under R307-208.

**R307-207-2. Applicability.**

(1) R307-207 applies to residential fireplaces and solid fuel burning devices in all areas of the state, except for PM10 and PM2.5 nonattainment and maintenance areas. R307-302 applies to PM10 and PM2.5 nonattainment or maintenance areas.

**R307-207-3. Opacity for Residential Heating.**

Visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

- (1) An initial fifteen minute start-up period, and
- (2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

**KEY: fireplaces, residential, solid fuel burning****November 8, 2012****Notice of Continuation March 4, 2010****19-2-101****19-2-104**

**R307. Environmental Quality, Air Quality.****R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2011, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

**R307-214-2. Sources Subject to Part 63.**

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2011, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
- (18) 40 CFR Part 63, Subpart CC, National Emission

Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission



Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions

Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission

Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(98) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(99) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(100) 40 CFR Part 63 Subpart BBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(101) 40 CFR Part 63 Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(102) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(103) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(104) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(106) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(107) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(108) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(109) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(110) 40 CFR Part 63, Subpart OOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(111) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(112) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(113) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(114) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart VVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(117) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(118) 40 CFR Part 63, Subpart XXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(119) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(120) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(121) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(122) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(123) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(124) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(125) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

**KEY: air pollution, hazardous air pollutant, MACT  
June 7, 2012 19-2-104(1)(a)  
Notice of Continuation November 8, 2012**

**R307. Environmental Quality, Air Quality.****R307-307. Davis, Salt Lake, and Utah Counties: Road Salting and Sanding.****R307-307-1. Records.**

Any person who applies salt, crushed slag, or sand to roads in Salt Lake, Davis or Utah Counties shall maintain records of the material applied. For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride. For sand or crushed slag the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis. All records shall be maintained for a period of at least two years, and the records shall be made available to the director or the director's designated representative upon request.

**R307-307-2. Content.**

After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah Counties must be at least 92% sodium chloride (NaCl).

**R307-307-3. Alternatives.**

(1) After October 1, 1993, any person who applies crushed slag, sand, or salt that is less than 92% sodium chloride to roads in Salt Lake, Davis, or Utah Counties must either:

(a) demonstrate to the director that the material applied has no more PM10 emissions than salt which is at least 92% sodium chloride; or

(b) vacuum sweep every arterial roadway (principle and minor) to which the material was applied within three days of the end of the storm for which the application was made. For the purpose of this rule, the term "arterial roadway" shall have the meaning outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

(2) In the interest of public safety, any person who applies crushed slag and/or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade, extreme weather, or other reasons, may petition the Board for a variance from the sweeping requirements in (1)(b) above. Specifically excluded from these sweeping requirements are all canyon roads and the portion of Interstate 15 near Point of the Mountain.

**KEY: air pollution, roads, particulate**

**November 8, 2012**

**19-2-104**

**Notice of Continuation June 2, 2010**

**R309. Environmental Quality, Drinking Water.**  
**R309-600. Source Protection: Drinking Water Source Protection For Ground-Water Sources.**  
**R309-600-1. Authority.**

Under authority of Section 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of ground-water sources of drinking water.

**R309-600-2. Purpose.**

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-600 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their ground-water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water. However, compliance with this rule is voluntary for existing ground-water sources of drinking water which are used by public (transient) non-community water systems.

**R309-600-3. Implementation.**

(1) New Ground-Water Sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-600-13(2) for each of its new ground-water sources to the Division of Drinking Water (DDW). A PWS shall not begin construction of a new source until the Executive Secretary concurs with its PER.

(2) Existing Ground-Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan in accordance with R309-600-7(1) for each of its existing ground-water sources to DDW according to the following schedule. Well fields or groups of springs may be considered to be a single source.

TABLE 1

Population Served By PWS:	Percent Of Sources:	DWSP Plans Due By:
Over 10,000	50% of wells	December 31, 1995
Over 10,000	100% of wells	December 31, 1996
3,300-10,000	100% of wells	December 31, 1997
Less than 3,300	100% of wells	December 31, 1998
Springs and other sources	100%	December 31, 1999

(3) DWSP for existing ground-water sources under the direct influence of surface water shall be accomplished through delineation of both the ground water and surface water contribution areas. The requirements of R309-600-7(1) apply to the ground water portion and the requirements of R309-605 apply to the surface water portion, except that the schedule for submitting these DWSP plans to DDW is based on the schedule in R309-605-3(1).

(4) PWSs shall maintain all land use agreements which were established under previous rules to protect their ground-water sources of drinking water from contamination.

**R309-600-4. Exceptions.**

(1) Exceptions to the requirements of R309-600 or parts thereof may be granted by the Executive Secretary to PWSs if: due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-600.

**R309-600-5. Designated Person.**

(1) A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-600. The designated person's address and telephone number shall be included in the written correspondence. Additionally, the above information must be included in each DWSP Plan and PER that is submitted to DDW.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

**R309-600-6. Definitions.**

(1) The following terms are defined for the purposes of this rule:

(a) "Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

(b) "Controls" means the codes, ordinances, rules, and regulations currently in effect to regulate a potential contamination source. "Controls" also means physical controls which may prevent contaminants from migrating off of a site and into surface or ground water. "Controls" also means negligible quantities of contaminants.

(c) "Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

(d) "Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

(e) "DDW" means Division of Drinking Water.

(f) "DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(g) "DWSP Zone" means the surface and subsurface area surrounding a ground-water source of drinking water supplying a PWS, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(h) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-600 are met.

(i) "Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code, as a "professional engineer" as defined therein.

(j) "Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf.

(k) "Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW on or before July 26, 1993.

(l) "Geologist" means a person licensed under the Professional Geologist Licensing Act, 58-76 of the Utah Code, as a "professional geologist" as defined therein.

(m) "Ground-water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground-water flows or is pumped from subsurface water-bearing formations.

(n) "Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

(o) "Land management strategies" means zoning and non-zoning strategies which include, but are not limited to, the following: zoning and subdivision ordinances, site plan

reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

(p) "Land use agreement" means a written agreement wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

(q) "Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground-water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

(r) "New ground-water source of drinking water" means a public supply ground-water source of drinking water for which plans and specifications are submitted to DDW after July 26, 1993.

(s) "Nonpoint source" means any diffuse source of pollutants or contaminants not otherwise defined as a point source.

(t) "PWS" means public water system.

(u) "Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged.

(v) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "Title III List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(R) of the Clean Air Act, As Amended," (550B98017). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at <http://www.epa.gov/ncepihom/orderpub.html>.

(w) "Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water. A pollution source is also a potential contamination source.

(x) "Protected aquifer" means a producing aquifer in which the following conditions are met:

(i) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(ii) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(iii) the public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

(y) "Replacement well" means a public-supply well drilled for the sole purpose of replacing an existing public-supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(i) the proposed well location shall be within a radius of 150 feet from an existing ground-water supply well, as defined in R309-600-6(1)(k); and

(ii) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code Annotated).

(z) "Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground-water source of drinking water.

(aa) "Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

(bb) "Wellhead" means the physical structure, facility, or device at the land surface from or through which ground-water flows or is pumped from subsurface, water-bearing formations.

#### **R309-600-7. DWSP Plans.**

(1) Each PWS shall develop, submit, and implement a DWSP Plan for each of its ground-water sources of drinking water.

Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Existing Wells and Springs." This document may be obtained from DDW. DWSP Plans must include the following seven sections:

(a) DWSP Delineation Report - A DWSP Delineation

Report in accordance with R309-600-9(6) is the first section of a DWSP Plan.

(b) Potential Contamination Source Inventory and Assessment of Controls - A Prioritized Inventory of Potential Contamination Sources and an assessment of their controls in accordance with R309-600-10 is the second section of a DWSP Plan.

(c) Management Program to Control Each Preexisting Potential Contamination Source - A Management Program to Control Each Preexisting Potential Contamination Source in accordance with R309-600-11 is the third section of a DWSP Plan.

(d) Management Program to Control or Prohibit Future Potential Contamination Sources - A Plan for Controlling or Prohibiting Future Potential Contamination Sources is the fourth section of a DWSP Plan. This must be in accordance with R309-600-12, consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(e) Implementation Schedule - Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(f) Resource Evaluation - Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(g) Recordkeeping - Each PWS shall document changes in each of its DWSP Plans as they are continuously updated to show current conditions in the protection zones and management areas. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, public notifications, and so forth.

(2) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(a) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to DDW in accordance with the schedule in R309-600-3 for each of its ground-water sources of drinking water.

(b) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to DDW within 90 days of the disapproval date.

(c) Retaining DWSP Plans - Each PWS shall retain on its premises a current copy of each of its DWSP Plans.

(d) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-600-7(1)(e), within 180 days after submittal if they are not disapproved by the Executive Secretary.

(e) Updating and Resubmitting DWSP Plans - Each PWS shall update its DWSP Plans as often as necessary to ensure they show current conditions in the DWSP zones and management areas. Updated plans also document the implementation of land management strategies in the recordkeeping section. Actual copies of any ordinances, codes, permits, memoranda of understanding, public education programs, bill stuffers, newsletters, training session agendas, minutes of meetings, memoranda for file, etc. must be submitted with the recordkeeping section of updated plans. DWSP Plans are initially due according to the schedule in R309-600-3. Thereafter, updated DWSP Plans are due every six years from their original due date. This applies even though a PWS may have been granted an extension beyond the original due date.

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction, source development, hydrogeology, delineation, potential

contamination sources, and proposed land management strategies.

#### **R309-600-8. DWSP Plan Review.**

(1) The Executive Secretary shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) The Executive Secretary may "disapprove" DWSP Plans for any of the following reasons:

(a) An inaccurate DWSP Delineation Report, a report that uses a non-applicable delineation method, or a DWSP Plan that is missing this report or any of the information and data required in it (refer to R309-600-9(6));

(b) an inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-600-10(1));

(c) an inaccurate assessment of current controls (refer to R309-600-10(2));

(d) a missing Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-600-11(1));

(e) a missing Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-600-12);

(f) a missing or incomplete Implementation Schedule, Resource Evaluation, Recordkeeping Section, Contingency Plan, or Public Notification Plan (refer to R309-600-7(1)(e)-(g), R309-600-14, and R309-600-15).

(3) The Executive Secretary may "concur with recommendations" when PWSs propose management programs to control preexisting potential contamination sources or management programs to control or prohibit future potential contamination sources for existing or new drinking water sources which appear inadequate or ineffective.

(4) The Executive Secretary may "conditionally concur" with a DWSP Plan or PER. The PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to DDW.

#### **R309-600-9. Delineation of Protection Zones and Management Areas.**

(1) PWSs shall delineate protection zones or a management area around each of their ground-water sources of drinking water using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure. The hydrogeologic method used by PWSs shall produce protection zones or a management area in accordance with the criteria thresholds below. PWSs may also choose to verify protected aquifer conditions to reduce the level of management controls applied in applicable protection areas.

(2) Reports must be prepared by a qualified licensed professional - A submitted report which addresses any of the following sections shall be stamped and signed by a professional geologist or professional engineer:

(a) A Delineation Report for Estimated DWSP Zones produced using the Preferred Delineation Procedure, as explained in R309-600-13(2)(a);

(b) a DWSP Delineation Report produced using the Preferred Delineation Procedure, as explained in R309-600-9(3)(a) and (6)(a);

(c) a report to verify protected aquifer conditions, as explained in R309-600-9(4) and (7);

(d) a report which addresses special conditions, as explained in R309-600-9(5); or

(e) a Hydrogeologic Report to Exclude a Potential Contamination Source, as explained in R309-600-9(6)(b)(ii).

(3) Criteria Thresholds for Ground-water Sources of

**Drinking Water:**

(a) Preferred Delineation Procedure - Four zones are delineated for management purposes:

(i) Zone one is the area within a 100-foot radius from the wellhead or margin of the collection area.

(ii) Zone two is the area within a 250-day ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iii) Zone three (waiver criteria zone) is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iv) Zone four is the area within a 15-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculation shall be based on this data.

(b) Optional Two-mile Radius Delineation Procedure - In place of the Preferred Delineation Procedure, PWSs may choose to use the Optional Two-mile Radius Delineation Procedure to delineate a management area. This procedure is best applied in remote areas where few if any potential contamination sources are located. Refer to R309-600-6(1)(q) for the definition of a management area.

(4) Protected Aquifer Classification - PWSs may choose to verify protected aquifer conditions to reduce the level of management controls for a public-supply well which produces water from a protected aquifer(s) or to meet one of the requirements of a VOC or pesticide susceptibility waiver (R309-600-16(4)). Refer to R309-600-6(1)(x) for the definition of a "protected aquifer."

(5) Special Conditions - Special scientific or engineering studies may be conducted to support a request for an exception (refer to R309-600-4) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special studies may include confined aquifer conditions, ground-water movement through protective layers, wastewater transport and fate, etc.

(6) DWSP Delineation Report - Each PWS shall submit a DWSP Delineation Report to DDW for each of its ground-water sources using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure.

(a) Preferred Delineation Procedure - Delineation reports for protection zones delineated using the Preferred Delineation Procedure shall include the following information and a list of all sources or references for this information:

(i) Geologic Data - A brief description of geologic features and aquifer characteristics observed in the well and area of the potential protection zones. This should include the formal or informal stratigraphic name(s), lithology of the aquifer(s) and confining unit(s), and description of fractures and solution cavities (size, abundance, spacing, orientation) and faults (brief description of location in or near the well, and orientation). Lithologic descriptions can be obtained from surface hand samples or well cuttings; core samples and laboratory analyses are not necessary. Fractures, solution cavities, and faults may be described from surface outcrops or drill logs.

(ii) Well Construction Data - If the source is a well, the report shall include the well drillers log, elevation of the

wellhead, borehole radius, casing radius, total depth of the well, depth and length of the screened or perforated interval(s), well screen or perforation type, casing type, method of well construction, type of pump, location of pump in the well, and the maximum projected pumping rate of the well. The maximum pumping rate of the well must be used in the delineation calculations. Averaged pumping rate values shall not be used.

(iii) Spring Construction Data - If the source is a spring or tunnel the report shall include a description or diagram of the collection area and method of ground-water collection.

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-515-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

(v) Aquifer Data for Existing Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test using the existing pumping equipment. Aquifer tests using observation wells are encouraged, but are not required. If a previously performed aquifer test is available and includes the required data described below, data from that test may be used instead. Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

If a constant-rate aquifer test is not practical, then the PWS shall obtain hydraulic conductivity of the aquifer using another appropriate method, such as data from a nearby well in the same aquifer, specific capacity of the well, published hydrogeologic studies of the same aquifer, or local or regional ground-water models. A constant-rate test may not be practical for such reasons as insufficient drawdown in the well, inaccessibility of the well for water-level measurements, or insufficient overflow capacity for the pumped water.

The constant-rate test shall:

(A) Provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours. Stabilized drawdown is achieved when there is less than one foot of change of ground-water level in the well within a six-hour period.

(B) Provide data as described in R309-515-6(10)(b)(v) through (vii).

(vi) Additional Data for Observation Wells - If the aquifer test is conducted using observation wells, the report shall include the following information for each observation well: location and surface elevation; total depth; depth and length of the screened or perforated intervals; radius, casing type, screen or perforation type, and method of construction; prepumping ground-water level; the time-drawdown or distance-drawdown data and curve; and the total drawdown.

(vii) Hydrogeologic Methods and Calculations - These include the ground-water model or other hydrogeologic method used to delineate the protection zones, all applicable equations, values, and the calculations which determine the delineated boundaries of zones two, three, and four. The hydrogeologic method or ground-water model must be reasonably applicable for the aquifer setting. For wells, the hydrogeologic method or

ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

(viii) Map Showing Boundaries of the DWSP Zones - A map showing the location of the ground-water source of drinking water and the boundary for each DWSP zone. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete boundaries for zones two, three, and four must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

The PWS shall also include a written description of the distances which define the delineated boundaries of zones two, three, and four. These written descriptions must include the maximum distances upgradient from the well, the maximum distances downgradient from the well, and the maximum widths of each protection zone.

(b) Optional Two-Mile Radius Delineation Procedure - Delineation Reports for protection areas delineated using the Optional Two-mile Radius Delineation Procedure shall include the following information:

(i) Map Showing Boundaries of the DWSP Management Area - A map showing the location of the ground-water source of drinking water and the DWSP management area boundary. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete two-mile radius must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

(ii) Hydrogeologic Report to Exclude a Potential Contamination Source - To exclude a potential contamination source from the inventory which is required in R309-600-10(1), a hydrogeologic report is required which clearly demonstrates that the potential contamination source has no capacity to contaminate the source.

(7) Protected Aquifer Conditions - If a PWS chooses to verify protected aquifer conditions, it shall submit the following additional data to DDW for each of its ground-water sources for which the protected aquifer conditions apply. The report must state that the aquifer meets the definition of a protected aquifer based on the following information:

(a) thickness, depth, and lithology of the protective clay layer;

(b) data to indicate the lateral continuity of the protective clay layer over the extent of zone two. This may include such data as correlation of beds in multiple wells, published hydrogeologic studies, stratigraphic studies, potentiometric surface studies, and so forth; and

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-600-6(1)(x) and R309-515-6(6)(i).

### **R309-600-10. Potential Contamination Source Inventory and Identification and Assessment of Controls.**

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial potential contamination source is required. Additional information should include the name and phone number of a contact person and a list of the chemical, biological, and/or

radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-600-9(6)(a)(viii) or R309-600-9(6)(b)(i).

(a) List of Potential Contamination Sources - A List of Potential Contamination Sources is found in the "Source Protection User's Guide for Ground-Water Sources." This document may be obtained from DDW. This list may be used by PWSs as a guide to inventorying potential contamination sources within their DWSP zones and management areas.

(b) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones or management areas. This includes adding potential contamination sources which have moved into DWSP zones or management areas, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(2) Identification and Assessment of Current Controls - PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled." If controls are not identified, the potential contamination source will be considered to be "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be identified, the potential contamination source must be assessed as "not adequately controlled." Identification and assessment should be limited to one of the following controls for each applicable hazard: regulatory, best management/pollution prevention, physical, or negligible quantity. Each of the following topics for a control must be addressed before identification and assessment will be considered to be complete. Refer to the "Source Protection User's Guide for Ground-Water Sources" for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from DDW.

(a) Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory control prevents ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(b) Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices prevent ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(c) Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls prevent contamination; assess the hazard; and set a date to reassess the hazard.

(d) Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount should be considered a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(3) For the purpose of meeting the requirements of R309-600, the Executive Secretary will consider a PWS's assessment that a potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below sufficient to demonstrate that the source is adequately controlled unless otherwise determined by the Executive Secretary. For all other state programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a



PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

(a) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and R317-6;

(b) closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground water;

(c) the Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and R317-8;

(d) the Underground Storage Tank Program established by Section 19-6-403 and R311-200 through R311-208; and

(e) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and R317-7 and R649-5.

**R309-600-11. Management Program to Control Each Preexisting Potential Contamination Source.**

(1) PWSs shall plan land management strategies to control each preexisting potential contamination source in accordance with their authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-600, designed to control potential contamination, and may be regulatory or non-regulatory. Each potential contamination source listed on the inventory required in R309-600-10(1) and assessed as "not adequately controlled" must be addressed. Land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) PWSs with overlapping protection zones and management areas may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies and the remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

**R309-600-12. Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.**

(1) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones or management areas consistent with the provisions of R309-600 and to an extent allowed under its authority and jurisdiction. Land management strategies must be designed to control potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent ground-water contamination under joint management agreements.

(3) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..." Section 10-8-15 includes ground-water sources.

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential

contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

**R309-600-13. New Ground-water Sources of Drinking Water.**

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-515-6(5)(a) or R309-515-7(4) must be submitted to DDW. The Executive Secretary will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-515. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-600-9(6), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells. The Delineation Report for Estimated DWSP Zones shall be stamped and signed by a professional geologist or professional engineer unless the Optional Two-Mile Radius Delineation Procedure is used for a new spring.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-600-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-600-9(6)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the

management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-600-6(1)(p). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with these criteria. Sewer lines that comply with these criteria may be assessed as adequately controlled potential contamination sources.

(a) Unprotected Aquifers -

(i) Zone one- all sewer lines and laterals shall be at least 50 feet from the wellhead or margin of the collection area, and be constructed in accordance to R309-515-6.

(ii) Zone two- all sewer lines and laterals within zone two or a management area shall be constructed in accordance with R309-515-6.

(b) Protected Aquifers - in zone one all sewer lines and laterals shall be constructed in accordance with R309-515-6, and shall be at least 10 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from the Executive Secretary that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-600-6(1)(y) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-600-13(6), and

(b) the Outline of Well Approval Process (refer to R309-515-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-600-7(1) for any new ground-water source of drinking water within one year after the date of the Executive Secretary's concurrence letter for the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

#### **R309-600-14. Contingency Plans.**

PWSs shall submit a Contingency Plan which includes all sources of drinking water for their entire water system to DDW concurrently with the submission of their first DWSP Plan. Guidance for developing Contingency Plans may be found in the "Source Protection User's Guide for Ground-Water Sources."

This document may be obtained from DDW.

#### **R309-600-15. Public Notification.**

A PWSs consumers must be notified that its DWSP plans are available for their review. This notification must be released to the public by December 31, 2003. Public notifications shall address all of the PWS's sources and include the following:

(a) A discussion of the general types of potential contamination sources within the protection zones;

(b) an analysis that rates the system's susceptibility to contamination as low, medium, or high; and

(c) a statement that the system's complete DWSP plans are available to the public upon request.

Examples of means of notifying the public and examples of public notification material are discussed in the "Source Protection User's Guide for Ground-Water Sources" which may be obtained from DDW.

#### **R309-600-16. Monitoring Reduction Waivers.**

(1) Three types of monitoring waivers are available to PWSs. They are: a) reliably and consistently, b) use, and c) susceptibility. The criteria for establishing a reliably and consistently waiver is set forth in R309-205. The criteria for use and susceptibility waivers follow.

(2) If a source's DWSP plan is due according to the schedule in R309-600-3, and is not submitted to DDW, its use and susceptibility waivers for the VOC and pesticide parameter groups (refer to R309-205-6(1)(e) and (f); and (R309-205-6(2)(h) and (i)) will expire unless an exception (refer to R309-600-4) for a new due date has been granted. Additionally, current use and susceptibility waivers for the VOC, pesticide and unregulated parameter groups will expire upon review of a DWSP plan, if these waivers are not addressed in the plan. Monitoring reduction waivers must be renewed every six years at the time the PWSs Updated DWSP Plans are due and be addressed therein.

(3) Use Waivers - If the chemicals within the VOC and/or pesticide parameter group(s) (refer to R309-200 table 200-3 and 200-2) have not been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three, the source may be eligible for a use waiver. To qualify for a VOC and/or pesticide use waiver, a PWS must complete the following two steps:

(a) List the chemicals which are used, disposed, stored, transported, and manufactured at each potential contamination source within zones one, two, and three where the use of the chemicals within the VOC and pesticide parameter groups are likely; and

(b) submit a dated statement which is signed by the system's designated person that none of the VOCs and pesticides within these respective parameter groups have been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three.

(4) Susceptibility Waivers - If a source does not qualify for use waivers, and if reliably and consistently waivers have not been issued, it may be eligible for susceptibility waivers. Susceptibility waivers tolerate the use, disposal, storage, transport, and manufacture of chemicals within zones one, two, and three as long as the PWS can demonstrate that the source is not susceptible to contamination from them. To qualify for a VOC and/or pesticide susceptibility waiver, a PWS must complete the following steps:

(a) Submit the monitoring results of at least one applicable sample from the VOC and/or pesticide parameter group(s) that has been taken within the past six years. A non-detectable analysis for each chemical within the parameter group(s) is required;

(b) submit a dated statement from the designated person verifying that the PWS is confident that a susceptibility waiver

for the VOC and/or pesticide parameter group(s) will not threaten public health; and

(c) verify that the source is developed in a protected aquifer, as defined in R309-600-6(1)(x), and have a public education program which addresses proper use and disposal practices for pesticides and VOCs which is described in the management sections of the DWSP plan.

(5) Special Waiver Conditions - Special scientific or engineering studies or best management practices may be developed to support a request for an exception to paragraph R309-600-16(4)(c) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special waiver condition studies may include:

(a) geology and construction/grout seal of the well to demonstrate geologic protection;

(b) memoranda of agreement which addresses best management practices for VOCs and/or pesticides with industrial, agricultural, and commercial facilities which use, store, transport, manufacture, or dispose of the chemicals within these parameter groups;

(c) public education programs which address best management practices for VOCs and/or pesticides;

(d) contaminant quantities;

(e) affected land area; and/or

(f) fate and transport studies of the VOCs and/or pesticides which are listed as hazards at the PCSs within zones one, two, and three, and any other conditions which may be identified by the PWS and approved by the Executive Secretary.

**KEY: drinking water, environmental health**  
**November 15, 2012**      **19-4-104(1)(a)(iv)**  
**Notice of Continuation March 17, 2010**

**R357. Governor, Economic Development.****R357-6. Technology and Life Science Economic Development and Related Tax Credits.****R357-6-1. Purpose.**

- (1) The purpose of these rules is to provide:
- (a) the criteria upon which the Governor's Office of Economic Development will determine whether to award tax credits to applicants;
  - (b) the procedures for documenting the Governor's Office of Economic Development's application of this criteria;
  - (c) the procedures by which the Governor's Office of Economic Development issues tax credit certificates;
  - (d) the available tax credits for which applicants may apply.

**R357-6-2. Authority.**

- (1) UCA 63M-1-2907 requires the office to make rules establishing criteria to prioritize the issuance of tax credits among applicants and to establish procedures for documenting the office's application of the criteria.

**R357-6-3. Definitions.**

- (1) Terms in these rules are used as defined in UCA 63M-1-2902.

**R357-6-4. Conditions.**

- (1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63M-1-2905 for obtaining a tax credit certificate.
- (2) Applicants shall submit the application form to the office to be eligible to receive a tax credit, quarterly throughout the fiscal year as set forth in UCA 63M-1-2908, on or before the following quarterly deadlines:
- (a) September 1; and
  - (b) December 1; and
  - (c) March 1; and
  - (d) June 1.
- (3) The office shall review and rank for approval accepted applications based upon the following criteria:
- (a) The overall economic impact on the state related to providing tax credits, taking into account such factors as:
    - (i) the number of new incremental jobs to Utah; or
    - (ii) capital investment in the state; or
    - (iii) new state revenues; or
    - (iv) any combination of Subsections (i), (ii), or (iii); or
    - (v) other criteria as established by the office by policy publication.
  - (4) The office shall keep a record of the review and ranking of applications based on the criteria in subsection (2).
  - (5) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63M-1-2909.
  - (6) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

**R357-6-5. Available Tax Credits.**

- (1) An applicant may seek one of three types of tax credits, drawn from funds expressly set aside by the Legislature:
- (a) a refundable tax credit for generating state tax revenue; or
  - (b) a non-refundable tax credit for investment in certain life sciences establishments.
- (2) Eligibility shall be determined by:
- (a) statutory requirements; and
  - (b) policy established by the office, with advice and consent of the board, which shall be posted on the office's public

website; and

- (c) the criteria listed in R357-6-4(2).

**KEY: economic development, life sciences, new state revenue**

**November 26, 2012**

**63M-1-2901**

**R357. Governor, Economic Development.****R357-9. Alternative Energy Development Tax Incentives.****R357-9-1. Purpose.**

- (1) The purpose of these rules is to establish:
  - (a) The standards an alternative energy entity shall meet to qualify for a tax credit;
  - (b) The procedures by which the Governor's Office of Economic Development issues tax credit certificates.

**R357-9-2. Authority.**

- (1) UCA 63M-1-3013(1)(a) requires the office to make rules setting the standards an alternative energy entity shall meet to qualify for a tax credit.

**R357-9-3. Definitions.**

- (1) Terms in these rules are used as defined in UCA 63M-1-3102.

**R357-9-4. Standards.**

- (1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63M-1-3104 for obtaining a tax credit certificate.
- (2) The office shall review accepted applications based upon the following criteria:
  - (a) Compliance with the requirements set forth in UCA 63M-1-3103;
  - (b) The overall economic impact on the state related to providing the tax credit, taking into account such factors as:
    - (i) the number of new incremental jobs to Utah; or
    - (ii) capital investment in the state; or
    - (iii) new state revenues; or
    - (iv) any combination of Subsections (i), (ii), or (iii); or
    - (v) other criteria as established by the office by policy publication.
- (3) The office shall keep a record of the review of applications based on the criteria in subsection (2).
- (4) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63M-1-3104.
- (5) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

**KEY: economic development, alternative energy, tax credits**  
**November 26, 2012 63M-1-3101**

**R380. Health, Administration.****R380-50. Local Health Department Funding Allocation Formula.****R380-50-1. Authority and Purpose.**

(1) This rule is being promulgated under the authority of Section 26A-1-116, which directs the Utah Department of Health to establish by rule a formula for allocating funds by contract to local health departments.

(2) This rule specifies the formula for allocating state-appropriated funds to local health departments by contract.

**R380-50-2. Definitions.**

(1) "Contract" means the Public Health Services Contract between the Utah Department of Health and the local health departments through which state block grant funds are distributed.

(2) "District Incentive" means funds allocated to local health departments to encourage them to form and maintain multi-county health departments.

(3) "Funds" means the State General Funds allocated by the Legislature to the Utah Department of Health for distribution to local health departments by contract.

(4) "Local Health Department" means a local health department established under Section 26A-1-102(5).

(5) "Rural County" means a county with a population of less than 100 persons per square mile.

(6) "Total Poverty Population" means the population in a county that is living below the poverty level established by the United States Government Census Bureau reported by Utah Job Service.

(7) "Total State Population" means the population figures by county as provided by the State Office of Planning and Budget.

**R380-50-3. Allocation Procedures.**

(1) By a three-fourths vote of its members, the Utah Association of Local Health Officers may, in cooperation with and subject to the approval of the Department of Health, allocate a portion of the funds as necessary to support basic public health programs within every local health department that benefit and are available to all residents of the state. The Department finds that population is not the sole relevant factor in determining need.

(2) As of July 1, 2008 each local health department is receiving the following base line funding, which shall remain the same unless new funding is received or cuts are implemented:

Bear River -- \$227,277.00

Central -- \$294,638.00

Davis -- \$132,480.00

Salt Lake -- \$451,388.00

Southeast -- \$271,595.00

Southwest -- \$288,966.00

Summit -- \$60,002.00

Tooele -- \$95,180.00

Tri-County -- \$202,128.00

Utah -- \$227,128.00

Wasatch -- \$57,552.00

Weber/Morgan -- \$188,754.00

(3) The Department adopts the following formula pursuant to Section 26A-1-116 for allocating to local health departments any increases or decreases in funding beyond the amounts reflected in the base line figures in R380-5-3(2).

(a) Minimum share. Twenty percent divided into twelve equal shares for each local health department.

(b) Rural county and District Incentive Factor. Twenty percent divided among the local health departments with at least one rural county according to the following percentages, however if the number of rural counties within the local health

department's boundary changes, the formula will be renegotiated:

(i) rural single county local health department, currently Summit, Tooele and Wasatch counties -- 1.45%

(ii) Multi county local health department with one rural county, currently Weber/Morgan -- 4.35%

(iii) Multi county local health department with three rural counties, currently Bear River and Tri-County -- 13.04%

(iv) Multi county local health department with four rural counties, currently Southeast -- 17.39%

(v) Multi county local health department with five rural counties, currently Southwest -- 21.74%

(vi) Multi county local health department with six rural counties, currently Central -- 26.09%

(b) Population Factor: Forty percent divided among the local health departments based on the percentage of the total state population living within the geographical boundaries of the local health department according to the most current estimate from the Governor's Office of Planning and Budget.

(c) Square Mile Factor: Twenty percent divided among the local health departments according to the percentage of the total square miles in the state lying within the geographical jurisdiction of each local health department.

**KEY: health, local government, funding formula**

**October 30, 2008**

**Notice of Continuation November 20, 2012**

**26A-1-116**

**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 that provides medical, behavioral or dental care services 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.**

The Department incorporates the October 1, 2012 versions of the following by reference:

(1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, as applied in Rule R414-70;

(3) Hospital Services Provider Manual with its attachments;

(4) Definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual;

(5) Speech-Language Services Provider Manual;

(6) Audiology Services Provider Manual;

(7) Hospice Care Provider Manual;

(8) Long Term Care Services in Nursing Facilities Provider Manual with its attachments;

(9) Personal Care Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual; and

(17) Pharmacy Services Provider Manual with its attachments.

**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.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

**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:

- hospital a \$220 coinsurance per year;
- hospital a \$6 copayment for each non-emergency use of hospital emergency services;

- 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

- 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;

- children;
- pregnant women;
- institutionalized individuals;
- American Indians; and
- 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.**

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(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 shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

**R414-1-30. Governing Hierarchy.**

(1) The Utah Medicaid State Plan under Title XIX of the Social Security Act Medical Assistance Program and any Waivers to that State Plan ("State Plan") shall be the governing authority for implementing the Medicaid program to the extent incorporated by rule. If a conflict exists between a Waiver and the Utah Medicaid State Plan, the Waiver shall govern.

(2) If an administrative rule addresses an issue that is not fully addressed by the State Plan, the administrative rule adopted by the Department shall govern the implementation of the Medicaid program, after giving full effect to the State Plan.

(3) Statements or actions by department employees shall not constitute exceptions or waivers to the governing authority of Subsection R414-1-30 (1) or (2).

**KEY: Medicaid**

**November 30, 2012**

**Notice of Continuation March 2, 2012**

**26-1-5**

**26-18-3**

**26-34-2**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-4x. Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment.****R414-4x-1.**

This policy is developed in accordance with the Medicare Update Bulletin, January 1982 (82-01), and the Utah Medicaid Information Bulletin 83-20.

Reimbursement shall not be made to a provider for service not actually furnished to a client because the client failed to keep a scheduled appointment.

Billing for services not rendered is improper, and may constitute fraud. If a provider, physician or supplier of services does not render a specifically identifiable service to a client, there is no basis for submitting a bill for reimbursement for services rendered.

Further information can be found in the Medicaid Provider Manual Section III.

**KEY: medicaid****1987****26-1-5****Notice of Continuation November 15, 2012**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-13. Psychology Services.****R414-13-1. Introduction and Authority.**

The psychology program is an optional Medicaid service authorized by 42 USC, 1396d(a)(6), 1994 ed., and 42 CFR 440.60(a), October 1993 ed., which are adopted and incorporated by reference.

**R414-13-2. Definitions.**

The definitions in R414-1 apply to this rule.

**R414-13-3. Client Eligibility Requirements.**

Evaluation, psychological testing, and individual and group therapy may be furnished only to individuals who are eligible for services under the federally-mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21.

**R414-13-4. Program Access Requirements.**

(1) A licensed independent psychologist practicing within the scope of his licensure in accordance with Title 58 may provide psychology services in a setting other than in an inpatient hospital setting or an intermediate care facility for the mentally retarded. Psychology services provided to hospital inpatients shall be covered under the hospital diagnostic related groups, and therefore are not eligible for reimbursement under this rule.

(2) After November 14, 1994, Medicaid may not authorize psychology services for Medicaid recipients over age 20.

(3) Through December 31, 1994, Medicaid may reimburse for psychology services authorized before November 14, 1994 for Medicaid recipients over age 20.

(4) Through December 31, 1994, Medicaid may reimburse for evaluation services that do not require prior authorization for Medicaid recipients over age 20.

**R414-13-5. Service Coverage.**

(1) Psychology services covered may include:

- (a) evaluation;
- (b) psychological testing;
- (c) individual therapy; and
- (d) group therapy.

(2) Evaluations that are not medically necessary or are only for court determinations on issues such as custody or visitation are not covered.

(3) Unless the provider satisfies the division that additional services are medically necessary, the division may only reimburse for the following services in a 12-month period:

- (a) one evaluation;
- (b) one psychological test or battery of tests;
- (c) 12 sessions of individual therapy; and
- (d) 24 sessions of group therapy.

**KEY: medicaid****1994****Notice of Continuation November 14, 2012****26-1-5****26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-22. Administrative Sanction Procedures and Regulations.****R414-22-1. Introduction and Authority.**

(1) In order to effectively and efficiently operate the Medicaid program, the Department may implement administrative sanctions against providers who abuse or improperly apply the benefit program.

(2) This rule is authorized by Sections 26-1-5 and Subsection 26-18-3(7).

**R414-22-2. Definitions.**

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or that fail to meet professionally recognized standards for health care.

(2) "Conviction" or "Convicted" means a criminal conviction entered by a federal or state court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

(3) "Fiscal agent" means an organization that processes and pays provider claims on behalf of the Department.

(4) "Fraud" means intentional deception or misrepresentation made by a person that results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable state law.

(5) "Offense" means any of the grounds for sanctioning set forth in Section R414-22-4.

(6) "Person" means any natural person, company, firm, association, corporation or other legal entity.

(7) "Practitioner" means a physician or other individual licensed under state law to practice his profession.

(8) "Provider" means an individual or other entity who has been approved by the Department to provide services to Medicaid clients, and who has signed a provider agreement with the Department.

(9) "Provider Sanction Committee" means the committee within the Department of Health that determines whether a Medicaid provider with a conviction or other sanction identified in Subsection R414-22-3 (3), (4), or (5) may enroll or remain in the Medicaid program. This committee consists of a designee of the Executive Director of the Department of Health, a designee of the Office of Inspector General of Medicaid Services, and the bureau director over provider enrollment.

(10) "Suspension" means that Medicaid items or services provided by a provider under suspension shall not be reimbursed by the Department.

(11) "Termination from participation" means termination of the existing provider agreement.

**R414-22-3. Grounds for Excluding Providers.**

(1) Upon learning of the crime, misdemeanor or misconduct, the Department shall exclude a prospective Medicaid provider who:

(a) has a current restriction, suspension, or probation from the Division of Professional and Occupational Licensing (DOPL) or another state's equivalent agency for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code; or

(b) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a felony conviction involving:

- (i) a sexual crime; or
- (ii) a controlled substance; or

(iii) health care fraud

(c) has a current restriction on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender or DOPL requires another medical professional to supervise and restrict the provider's activity; or

(d) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a misdemeanor conviction that involves a controlled substance.

(2) Upon learning of the crime, misdemeanor or misconduct, the Department shall terminate a current Medicaid provider for any violation stated in Subsection R414-22-3(1).

(3) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider who has served any term, completed any associated probation or parole, or made complete court-imposed restitution for a prior felony conviction involving:

- (a) a sexual crime;
- (b) a controlled substance; or
- (c) health care fraud.

(4) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider or allow a provider to remain in the Medicaid program if the provider has a previous restriction, suspension, or probation from DOPL for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code

(5) Subject to approval of the Provider Sanction Committee, the Department may allow a provider to remain in the Medicaid program when the Office of Inspector General of Medicaid Services has recommended the program consider termination of the provider.

(6) The Provider Sanction Committee may consider the need to maintain client access to services when making a determination related to convictions or sanctions described in Subsection R414-22-3(3), (4), or (5).

(7) The Provider Sanction Committee may use any grounds described in Section R414-22-4 to exclude providers from Medicaid.

(8) The Department may exclude a prospective Medicaid provider who has a current restriction, suspension, or probation from DOPL or another state's equivalent agency.

(9) The Provider Sanction Committee may exclude a prospective provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(10) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

**R414-22-4. Grounds for Sanctioning Providers.**

The Department may impose sanctions against a provider who:

(1) knowingly present, or cause to be presented, to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise; or

(2) knowingly submits, or cause to be submitted, false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to; or

(3) knowingly submits, or cause to be submitted, for Medicaid reimbursement any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided prior to his suspension or termination from the Medicaid program; or

(4) knowingly submits, or cause to be submitted, false

information for the purpose of meeting Medicaid prior authorization requirements; or

(5) fails to keep records that are necessary to substantiate services provided to Medicaid recipients; or

(6) fails to disclose or make available to the Department, its authorized agents, or the State Fraud Control Unit, records or services provided to Medicaid recipients or records of payments made for those services; or

(7) fails to provide services to Medicaid recipients in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate state regulatory agencies; or

(8) breaches the terms of the Medicaid provider agreement; or

(9) fail to comply with the terms of the provider certification on the Medicaid claim form; or

(10) overutilizes the Medicaid program by inducing, providing, or otherwise causing a Medicaid recipient to receive services or merchandise that is not medically necessary; or

(11) rebates or accepts a fee or portion of a fee or charge for a Medicaid recipient referral; or

(12) violates the provisions of the Medical Assistance Act under Title 26, Chapter 18, or any other applicable rule or regulation; or

(13) knowingly submits a false or fraudulent application for Medicaid provider status; or

(14) violates any laws or regulations governing the conduct of health care occupations, professions, or regulated industries; or

(15) is convicted of a criminal offense relating to performance as a Medicaid provider; or

(16) conducts a negligent practice resulting in death or injury to a patient as determined in a judicial proceeding; or

(17) fails to comply with standards required by state or federal laws and regulations for continued participation in the Medicaid program; or

(18) conducts a documented practice of charging Medicaid recipients for Medicaid covered services over and above amounts paid by the Department unless there is a written agreement signed by the recipient that such charges will be paid by the recipient; or

(19) refuses to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with state or federal law or regulations; or

(20) fails to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, CMS Form 2567, in provider operations within a specific time frame agreed to by the Department and the provider, or pursuant to a court or formal administrative hearing decision; or

(21) is suspended or terminated from participation in Medicare for failure to comply with the laws and regulation governing that program; or

(22) fails to obtain or maintain all licenses required by state or federal law to legally provide Medicaid services; or

(23) fails to repay or make arrangements for repayment of any identified Medicaid overpayments, or otherwise erroneous payments, as required by the State Plan, court order, or formal administrative hearing decision.

(24) The Department may sanction a Medicaid provider who has a current restriction, suspension, or probation from DOPL or another state's equivalent agency.

(25) The Provider Sanction Committee may sanction a provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(26) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a

provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

#### **R414-22-5. Sanctions.**

Sanctions for violating any subsection of Section R414-22-4 are:

(1) Termination from participation in the Medicaid program; or

(2) Suspension of participation in the Medicaid program.

#### **R414-22-6. Imposition of Sanction.**

(1) Before the Department decides to impose a sanction, it shall notify the provider, in writing, of:

(a) the findings of any investigation by the Department, its agents, or the Bureau of Medicaid Fraud; and

(b) any possible sanctions the Department may impose.

(2) Providers shall have 30 days after the notice date to respond in writing to the findings of any investigation. A written request for additional time of less than 30 days may be granted by the Department for good cause shown.

(3) The Provider Sanction Committee has the discretion to impose sanctions after receiving the provider's input.

(4) The Provider Sanction Committee may consider the following factors when determining which sanction to impose:

(a) seriousness of offense;

(b) extent of offense;

(c) history of prior violations of Medicaid or Medicare law;

(d) prior imposition of sanctions by the Department;

(e) extent of prior notice, education, or warning given to the provider by the Department pertaining to the offense for which the provider is being considered for sanction;

(f) adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense;

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) sanctions imposed by licensing boards or peer review groups and professional health care associations pertaining to the offense; and

(i) suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these programs.

(5) When the Department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

#### **R414-22-7. Scope of Sanction.**

(1) Once a provider is suspended or terminated, the Department shall only pay claims for services provided prior to the suspension or termination.

(2) The Department may suspend or terminate any individual, clinic, group, corporation, or other similar organization, who allows a sanctioned provider to bill Medicaid under the clinic, group, corporation or organization provider number.

#### **R414-22-8. Notice of Sanction.**

(1) When a provider has been sanctioned for a period exceeding 15 days, the Department may notify the applicable professional society, board of registration or licensor, and federal or state agencies.

(2) Notice includes:

(a) the findings made; and

(b) the sanctions imposed.

(3) The Department shall timely notify any appropriate Medicaid recipient of the provider's suspension or termination from the Medicaid program.

**R414-22-9. Monitoring.**

(1) If the Department is aware that an applicant or provider has had an action against them related to the following issues, the applicant will be subject to additional monitoring. The issues include:

- (a) claims for excessive charges;
- (b) providing unnecessary services;
- (c) failing to disclose required information; or
- (d) a misdemeanor conviction that involves health care fraud.

(2) The Department will refer applicants or providers described in Subsection R414-22-9(1) to the Office of Inspector General of Medicaid Services to be monitored for at least six months.

**R414-22-10. Provider Application.**

The Department shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

**KEY: Medicaid****November 14, 2012****26-1-5****Notice of Continuation November 26, 2012****26-18-3(7)**



**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-32. Hospital Record-keeping Policy.****R414-32-1.**

## 1. General Requirement

A hospital providing care for any Utah Medicaid patient must provide sufficient documentary evidence that ancillary services for which Medicaid is billed were actually rendered in the diagnosis and/or treatment of that patient and that such services were properly authorized by a licensed physician. If such evidence is not provided in accordance with the provisions of this administrative rule, then reimbursement for such unsupported charges will not be allowed by Medicaid.

## 2. Documentation That Services Were Rendered

Sufficient documentary evidence that an ancillary service was rendered consists of medical reports, x-rays and laboratory analyses normally provided by the department which renders the service. Department logs may be accepted as documentation that ancillary services were rendered if each entry is signed and dated by an authorized individual rendering the services.

## 3. Documentation That Services Were Properly Authorized

Sufficient documentary evidence of a physician authorization consists of a written order signed and dated by a licensed physician within the time limits specified in the bylaws of the hospital or within thirty (30) days after the date of discharge, whichever is sooner.

A written departmental protocol is acceptable as authorization if the protocol is specific with respect both to the medical service to be rendered and to the conditions and circumstances under which the service may be given without the direct authorization of a licensed physician. All such protocols must have the formal written approval of the appropriate medical staff committees of the hospital and be signed by the physician in charge of the care unit.

## 4. Notification of Discrepancies

If, upon examination of a hospital patient's medical record 30 days or more after the patient was discharged, sufficient documentary evidence is not found to support charges for ancillary services, the Department of Health or its agent will notify the hospital in writing of such discrepancy. If within thirty (30) days of the date the hospital is notified of such discrepancy, the hospital compiles in the medical record sufficient documentary evidence in support of the charge that was noted as a discrepancy, then such evidence will be considered sufficient. If the hospital does not place such evidence in the medical record within thirty (30) days after being notified of the discrepancy then reimbursement will not be allowed for the unsupported item. Subsequent presentation of any documentation will not be accepted by the Department of Health.

**KEY: medicaid****1987****26-1-5****Notice of Continuation November 14, 2012**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-301. Medicaid General Provisions.****R414-301-1. Authority and Purpose.**

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish general provisions governing eligibility for medical assistance programs.

(3) The Department of Health may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more medical assistance programs authorized by the Department of Health. The Department of Health is responsible for the administration of medical assistance programs authorized under the Utah Medicaid State Plan, the State Plan for the Utah Children's Health Insurance Program and various waivers under Title XIX of the Social Security Act.

**R414-301-2. Definitions.**

The definitions in Section 26-18-2 apply in this rule. In addition, the following definitions apply in Rules R414-301 through R414-308:

(1) "Aged" means an individual who is 65 years of age or older.

(2) "Agency" means the Department of Health as referenced in incorporated federal materials.

(3) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for children under the age of 21.

(4) "Cost-of-care" means the amount of income after allowable deductions an individual must pay for their long-term care services either in a medical institution or for home and community-based waiver services.

(5) "Department" means the Department of Health.

(6) "Eligibility Agency" means any state office or outreach location of the Department of Workforce Services (DWS) that accepts and processes applications for medical assistance programs under contract with the Department. The Department of Human Services (DHS) is the eligibility agency under contract with the Department to process applications for children in state custody.

(7) "Federal poverty guideline" means the United States (U.S.) federal poverty measure issued annually by the Department and DHS to determine financial eligibility for certain means-tested federal programs.

(8) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301 that uses the Basic Maintenance Standard as the income limit for eligibility.

(9) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(10) "QI-1" means the Qualifying Individuals Group 1 program, a Medicare Cost-Sharing program.

(11) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(12) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including:

- (a) change in the source of income;
- (b) change of more than \$25 in gross income;
- (c) changes in household size;
- (d) changes in residence;
- (e) gain of a vehicle;
- (f) change in resources;
- (g) change of more than \$25 in total allowable deductions;
- (h) changes in marital status, deprivation, or living arrangements;

(i) pregnancy or termination of a pregnancy;

(j) onset of a disabling condition; and

(k) change in health insurance coverage including changes in the cost of coverage.

(13) "Resident of a medical institution" means a single individual who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married individuals are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(14) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(15) "Spendedown" means an amount of income in excess of the allowable income standard that must be paid in cash to the eligibility agency or incurred through the medical services not paid by Medicaid or other health insurance coverage, or some combination of these.

(16) "Spouse" means any individual who has been married to an applicant or recipient and has not legally terminated the marriage.

(17) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the applicable medical assistance program. Verification may include documents in paper format, electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(18) "Worker" means a state employee who determines eligibility for medical assistance programs.

**R414-301-3. Client Rights and Responsibilities.**

(1) Anyone may apply or reapply any time for any program. A program subject to periods of closed enrollment will deny applications received during a closed enrollment period.

(2) If someone needs help to apply he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.

(3) Workers will identify themselves to clients.

(4) Workers will treat clients with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously. Workers shall send a written request for verifications.

(6) If a client must be visited after working hours, the eligibility worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The eligibility agency may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits in accordance with the requirements of 42 CFR 431.210, 42 CFR 431.211, 42 CFR 431.213, and 42 CFR 431.214.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any eligibility agency office or online. Policy manuals are not available for review at outreach locations or call centers.

(12) Applicants and recipients may request a fair hearing if they disagree with the eligibility agency's decision.

(13) The recipient must repay any understated liability. The recipient is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In

addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the recipient's behalf to Medicaid health plans and mental health providers even if the recipient does not receive a direct medical service from these entities.

(14) The client must report a reportable change as defined in Subsection R414-301-2(11) to the eligibility agency within ten days of the day the change becomes known.

#### **R414-301-4. Safeguarding Information.**

(1) The Department adopts 42 CFR 431.301 through 42 CFR 431.307, 2011 ed., which is incorporated by reference. The Department requires compliance with Section 63G-2-101 through Section 63G-2-310.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information released cannot include information obtained through an income match system.

#### **R414-301-5. Complaints and Agency Conferences.**

(1) A client may request an agency conference with the eligibility staff or supervisor at the eligibility agency at any time to resolve a problem regarding the client's case. Requests shall be granted at the eligibility agency's discretion. Clients may have an authorized representative or a friend attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing according to the provisions in Section R414-301-6, to assure the right to a hearing.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in Section R414-301-6, the client may proceed with the fair hearing process.

(5) The eligibility agency shall provide proper notice if the agency makes any additional adverse changes in the client's eligibility as a result of the agency conference. The client then has a right to request a fair hearing based on the new adverse action.

#### **R414-301-6. Hearings.**

(1) The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 42 CFR 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or recipient must request a hearing in writing or orally at the eligibility agency. The request must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.

(3) Hearings are conducted only at the request of a client or spouse; a minor client's parent; or a guardian or representative of the client.

(4) A recipient who requests a fair hearing shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within ten calendar days of the mailing date of the notice of agency action.

(5) The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, then the eligibility agency must receive the request by the close of business on the first business day immediately following the due date.

(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases.

(8) DWS conducts informal, evidentiary hearings in accordance with Section R986-100-124 through Section R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-6(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-6(17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or recipient may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.

(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-18. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be

made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A Department decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.

(22) Recipients are not entitled to continued benefits pending judicial review by the district court.

**KEY: client rights, hearings, Medicaid  
December 1, 2012  
Notice of Continuation January 31, 2008**

26-18

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-504. Nursing Facility Payments.****R414-504-1. Introduction.**

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

**R414-504-2. Definitions.**

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the

incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.

(16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than \$500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, its normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

**R414-504-3. Principles of Facility Case Mix Rates and Other Payments.**

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in Rule R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data.

The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(12) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

#### **R414-504-4. Quality Improvement Incentive.**

Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

#### **R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.**

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-

13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to R414-504-3.

(2) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

**KEY: Medicaid**

**July 1, 2011**

**Notice of Continuation November 14, 2012**

**26-1-5**

**26-18-3**

**26-35a**

**R428. Health, Center for Health Data, Health Care Statistics.**

**R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule.**

**R428-11-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

**R428-11-2. Purpose.**

This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data are needed to develop and maintain a statewide ambulatory surgical data base.

**R428-11-3. Definitions.**

These definitions apply to rule R428-11.

- (1) "Office" as defined in R428-2-3(A).
- (2) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.
- (3) "Hospital" means a facility that is licensed under R432-100.
- (4) "Ambulatory surgical facility" means a facility that is licensed under R26-21-2.
- (5) "Patient Social Security number" is the social security number of the patient receiving health care.
- (6) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Office assigns the number to serve as a control number for data analysis.
- (7) "Electronic media" means a magnetic tape or a diskette.
- (8) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.
- (9) "Committee" means the Utah Health Data Committee created by Title 26, Chapter 33a.

**R428-11-4. Reporting Source of Ambulatory Surgical Data.**

The reporting sources for ambulatory surgery data are Utah licensed general acute care hospitals and ambulatory surgical facilities.

- (1) A general acute care hospital shall report discharge data records for each surgical outpatient discharged from its facility.
- (2) An ambulatory surgical facility shall report surgical and diagnostic procedure data records for each patient discharged from its facility.
- (3) A hospital or ambulatory surgical facility may designate an intermediary or may submit ambulatory surgery data directly to the Office.
- (4) Each hospital and ambulatory surgical facility is responsible for compliance with the rule. Use of a designated intermediary does not relieve the hospital or ambulatory surgical facility of its reporting responsibility.
- (5) Each hospital and ambulatory surgical facility shall designate a department and a person within the department who is responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

**R428-11-5. Electronic Media Data Submittal Schedule.**

Each hospital and ambulatory surgical facility shall submit to the Office a single outpatient surgical data record for each patient discharged according to the schedule shown in Table 1,

Hospital and Ambulatory Surgical Facility Data Submittal Schedule, or a schedule mutually agreed upon by the Office and hospital or ambulatory surgical facility.

TABLE 1  
HOSPITAL AND AMBULATORY SURGICAL FACILITY  
DATA SUBMITTAL SCHEDULE

IF PATIENT'S DATE OF DISCHARGE IS BETWEEN:	DISCHARGE DATA RECORD IS DUE BY:
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

For a patient with multiple discharges, each hospital or ambulatory surgical facility submitting electronic media shall submit a single data record for each discharge. For a patient with multiple billing claims each hospital or ambulatory surgical facility shall consolidate the multiple billings into a single data record for submission after the patient's discharge.

**R428-11-6. Electronic Transaction Data Submittal.**

Hospitals and ambulatory surgical centers may request data submission by electronic transaction, as submitted to the payer through the Exemptions, Extensions, and Waivers process.

**R428-11-7. Selection of Records to Submit via Electronic Media.**

Each hospital or ambulatory surgical facility licensed in Utah shall report to the Office information relating to any patient surgical or diagnostic procedure falling within the types described in Table 2, as defined by the corresponding CPT codes and ICD-9-CM codes. In case of changes in the CPT and/or ICD-9-CM codes in future versions, the most current list shall override the lists in Table 2.

TABLE 2  
TYPES OF SURGICAL SERVICE TO BE SUBMITTED  
IF PERFORMED IN OPERATING OR PROCEDURE ROOM

DESCRIPTION	CPT CODES	ICD-9-CM CODES
Mastectomy	19120-19220	850-8599
Musculoskeletal	20000-29909	760-8499
Respiratory	30000-32999	300-3499
Cardiovascular	33010-37799	350-3999
Lymphatic	38100-38999	400-4199
Diaphragm	39501-39599	
Digestive System	40490-49999	420-5499
Urinary	50010-53899	550-5999
Male Genital	54000-55899	600-6499
Laparoscopy	56300-56399	
Female Genital	56405-58999	650-7199
Endocrine/Nervous	60000-64999	010-0799
Eye	65091-68899	080-1699
Ear	69000-69979	180-2099
Heart Catheterization	93501-93660	3721-3723
Nose, Mouth, Pharynx		210-2999

**R428-11-8. Data Element Reporting via Electronic Media.**

Table 3 displays the reportable data elements. Hospitals and ambulatory surgical facilities shall report the required data elements shown in Table 3, beginning December 15, 1997.

The Office shall provide to each hospital and ambulatory surgical facility an Ambulatory Surgery Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The Ambulatory Surgery Data Submittal Technical Manual is effective on November 15, 1997.

TABLE 3  
REQUIRED AMBULATORY SURGERY AND MAJOR PROCEDURE  
DATA ELEMENTS FOR ELECTRONIC MEDIA REPORTING

CATEGORY:	NAME:
Provider	
1	Medical care provider identifier
Patient	



2	Patient control number
3	Patient's medical chart number
4	Patient's Social Security Number
5	Patient's postal zip code for address
6	Patient's date of birth
7	Patient's gender
Service	
8	Admission date
9	Source of admission
10	Patient's status
11	Discharge date
Diagnosis and Treatment	
12	Diagnosis codes
13	Procedure codes
14	Date of principal procedure
15	Modifiers for procedure codes
16	ICD9 Procedure Codes
17	Related Diagnosis Codes
Charge	
18	Statement covers period
19	Total facility charge
20	Primary, secondary, and third sources of payment
Physician	
21	Performing physician ID
22	Additional physicians' IDs
23	Type of bill (for hospital, if applicable)

**R428-11-9. Compiling of Electronic Transactions.**

The Office shall retain records and data elements that meet specifications listed in Tables 2 and 3 and discard all other records and data elements received via electronic transaction.

**R428-11-10. Data Security and Integrity.**

The Office shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Office may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of limited data fields within 18 months of submittal.

**R428-11-11. Exemptions, Extensions, and Waivers.**

(1) Hospitals and ambulatory surgical facilities may submit requests for exemptions or waivers to the Committee at least 60 calendar days prior to the due date as listed in the data submittal schedule in R428-11-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital or ambulatory surgical facility wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital or ambulatory surgical facility must separately request each additional 30 calendar day extension.

(3) The Committee may grant exemptions or waivers when the hospital or ambulatory surgical facility demonstrates that compliance imposes an unreasonable cost to the hospital. The Office may grant extensions when the hospital or ambulatory surgical facility documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

- (a) the petitioner's name, mailing address, telephone number, and contact person;
- (b) the date the exemption, extension, or waiver is to start and end;
- (c) a description of the relief sought, including reference to the specific sections of the rule;
- (d) a statement of facts, reasons, or legal authority in support of the request; and

- (e) a proposed alternative to the requirement.
- (4) A form for exemption, extension, or waiver can be found in the technical manuals available from the Office. Exemptions, extensions, or waivers may be granted for the following:

(a) Hospital or ambulatory surgical facility exemption: All hospitals and ambulatory surgical facilities are subject to the reporting requirements. Reasons justifying an exemption might be such as a circumstance where the hospital makes no effort to charge any patient for service.

(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.

(c) Reportable data element exemption: Each request for a data element exemption must be made separately.

(d) Submission media exemption: This exemption allows variation in the submission media, such as a paper copy of the uniform billing form.

(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Office's ability to process the submittal media and format with available computer resources.

**R428-11-12. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**KEY: health, hospital policy, health planning  
February 27, 2004 26-33a-104  
Notice of Continuation November 14, 2012 26-33a-108**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures.****R428-13-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

**R428-13-2. Purpose.**

This rule establishes a performance measurement data collection and reporting system for health plans licensed in the State of Utah and certain health plans. The data are needed to promote informed consumer choice in health plan selection and measure the quality of care provided by Utah health plans.

**R428-13-3. Definitions.**

These definitions apply to rule R428-13:

(1) "Office" as defined in R428-2-3A.

(2) "Health plan" means:

(a) any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or title XXI of the Social Security Act;

(b) a "Health Maintenance Organization (HMO)" is defined as any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code;

(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; and

(e) a "Preferred Provider Organization (PPO)" is defined as all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers an insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according to the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).

(3) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(4) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(5) "Performance Measure" means the quantitative, numerical measure of an aspect of the health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the health plan in its entirety as described in HEDIS.

(6) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(7) "HEDIS data" means the complete set of HEDIS measures calculated by the health plans according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the health plans.

(8) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(9) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(10) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(11) "Submission year" means the year immediately

following the covered period.

**R428-13-4. Submission of Performance Measures.**

(1) Each health plan shall compile and submit HEDIS data to the Office according to this rule.

(2) By July 1 of each year, all health plans shall submit to the Office audited HEDIS data for the preceding calendar year.

(3) Each health plan shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to the health plan's submitting it to the Office.

(4) Each health plan may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(5) If a health plan presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(6) The auditor shall follow the guidelines and procedures contained in 2012: Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures published by NCQA.

(7) Each health plan shall cause its contracted audit agency to submit a copy of the audit agency's report by July 1 of the submission year to the Office.

(8) Each health plan shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the health plan's comments.

**R428-13-5. Release of Performance Measures.**

(1) The Health Data Committee shall follow NCQA's "HEDIS Compliance Audit: Standards, Policies, and Procedures" to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give health plans 35 days to review any report which identifies it by name. The identified health plan may submit comments and alternative interpretations to the Office.

**R428-13-6. Exemptions.**

(1) A health plan that cannot meet the reporting requirements of this rule may request an exemption by January 1 of each submission year by submitting to the Office a written request for an exemption, accompanied by all documentation necessary to establish the health plan's inability to report. A health plan may request an exemption if the HMO or health plan did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the health plan's control.

(2) The Office may request additional information from the HMO and health plan relevant to the exemption or extension request. If the committee denies the exemption, the health plan may resubmit the request to the Office if it has additional information or analysis bearing on the request.

**R428-13-7. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**KEY: health, health planning, health policy**

**July 2, 2012**

**Notice of Continuation November 14, 2012**

**26-33a**

**R455. Heritage and Arts, History.****R455-4. Ancient Human Remains.****R455-4-1. General Authority.**

Section 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the State of Utah.

**R455-4-2. Purpose.**

The primary purpose of the 9-8-309 and this rule is to assure that ancient human remains are given respectful, lawful, and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property, and to ensure that steps are taken to determine lawful ownership of recovered remains.

**R455-4-3. Definitions.**

A. "Antiquities Section" means the Antiquities Section of the Division of State History.

B. "ancient" means one-hundred years of age or older.

C. "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.

D. "human remains" means all or part of a physical individual, in any stage of decomposition, and objects on or in association with the physical individual that were placed there as part of the death rite or ceremony of a culture.

E. "nonfederal land" includes land owned or controlled by the state, a county, city, or town, an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members, a person other than the federal government; or school and institutional trust lands as defined in Section 53C-1-103.

F. "state land" means any land owned by the state including the state's legislative and judicial branches, departments, divisions, agencies, boards, commissions, councils, and committees, institutions of higher education as defined under Section 53B-3-102. "State land" does not include land owned by a political subdivision of the state, land owned by a school district; private land, school and institutional trust lands as defined in Section 53C-1-103.

G. "excavate" means the scientific disturbance or removal of surface or subsurface archaeological resources by qualified archaeologists in compliance with Title 9, Chapter 8, Part 3, Antiquities.

H. "Director" means the Director of the Utah Division of State History.

I. "local law enforcement agency" means the police department, sheriff's office, or other agency having jurisdiction.

**R455-4-4. Response to Notification of a Discovery of Ancient Human Remains.**

Human remains that are discovered in conjunction with a project or undertaking subject to Chapter 8, part 4 Historic Sites, or Section 106 of the National Historic Preservation Act, are the responsibility of the project proponents, not the Antiquities Section. The Antiquities Section may however advise, assist and cooperate with responsible agencies in meeting their obligations regarding ancient human remains. For ancient human remains recovered as part of a compliance project from lands covered by 9-8-309, the Antiquities Section will, following appropriate analyses, and if asked, assume the role of the landowner for purposes of determination of ownership as per 9-9-403(8).

Upon notification that ancient human remains have been discovered, the Antiquities Section will gather information and consult as necessary with affected agencies and individuals and within two business days determine a course of action with approval of the landowner (leave remains in place or excavate and remove remains) and notify the affected agencies and

individuals of the decision.

**R455-4-5. Excavation and Removal of Ancient Human Remains.**

If the landowner grants permission for excavation and removal, the Antiquities Section or its agent will conduct respectful and scientifically-sound investigations of the remains and will remove from the site the remains within five days of receiving permission to excavate. The Antiquities Section may establish a perimeter around the area of the remains for the protection of staff and the remains. Only Antiquities Section personnel and those individuals with permission from the Antiquities Section will be allowed into the area surrounding the remains until the excavation is completed. If agreed to by the landowner, an alternative agreement may be reached (as provided for in 9-8-309(3)). If extraordinary circumstances (as defined in 9-8-309(1)(c)(i) exist or arise requiring a time extension, the Antiquities Section will notify the landowner immediately.

If the landowner does not grant permission to excavate and remove the ancient human remains, the Antiquities Section will inform the landowner of the legal restrictions regarding human remains as specified in UCA 76-9-704.

Excavated human remains will be examined. Those determined to be Native American will be subject to Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. For the purposes of determining ownership under the act, for all remains excavated under the provisions of this part by the Antiquities Section, the Section will serve in the capacity of the landowner and will make lineal descent and cultural affiliation ownership determinations in consultation with the Division of Indian Affairs and allowing interested individuals and tribes to assert claims of ownership.

**KEY: ancient human remains, archaeology****November 9, 2012****Notice of Continuation July 13, 2011****9-8-309****9-8-403****76-9-704**

**R460. Housing Corporation, Administration.****R460-2. Definitions of Terms Used Throughout R460.****R460-2-1. Terms Which are Defined in Section 35A-8-703.**

- (1) Bonds;
- (2) Corporation;
- (3) Financial assistance;
- (4) Housing sponsor;
- (5) Low and moderate income persons;
- (6) Mortgage lender;
- (7) Mortgage loan;
- (8) Mortgage;
- (9) President;
- (10) Residential housing;
- (11) State.

**R460-2-2. Additional Defined Terms.**

(1) "Act" means the Utah Housing Corporation Act, set forth in Section 35A-8-701 et. seq.

(2) "ADA coordinator" means UHC's president or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

(4) "Complainant" means a person who has a disability and who alleges in a complaint filed with UHC according to this rule, that an act of discrimination occurred by UHC, and satisfies one or more of the following:

(a) who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by UHC;

(b) who would otherwise be an eligible applicant for vacant UHC employment positions;

(c) who is an employee of UHC.

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

(6) "Federal" means of, pertaining to, or designating the government of the United States of America.

(7) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, sleeping, standing, sitting, reaching, lifting, bending, reading, concentrating, thinking, communicating, interacting with others, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(8) "Multifamily" means a residential housing project consisting of five or more rental dwelling units located on a single or multiple tract(s) of land.

(9) "Participant" means a person, natural or otherwise, who is involved in or has a critical influence on or substantive control over a transaction which involves a UHC program, including but not limited to any of the following:

(a) appraisers and inspectors;

(b) real estate agents and brokers;

(c) management and marketing agents;

(d) attorneys;

(e) title insurance companies;

(f) escrow and closing agents;

(g) loan officers or other agents of lenders;

(h) project owners;

(i) developers, builders and contractors involved in the construction or rehabilitation of properties financed by UHC, or receiving UHC funds, or allocations of Federal or State

resources directly or indirectly;

(j) individuals who are applicants for or borrowers under UHC mortgage loans, or members of their families;

(k) employees or agents of any of the above.

(10) "Single-Family" means residential housing consisting of one dwelling unit occupied by the fee simple owner of the dwelling unit.

(11) "UHC" means Utah Housing Corporation.

**KEY: housing finance  
November 27, 2012**

**35A-8-711**

**R460. Housing Corporation, Administration.**  
**R460-4. Additional Servicing Rules (Reserved).**  
**R460-4-1. Reserved.**  
Reserved.

**KEY: housing finance**  
**November 27, 2012**                      **35A-8-711**  
**Notice of Continuation September 28, 2012**      **35A-8-712**

**R460. Housing Corporation, Administration.****R460-5. Termination of Eligibility to Participate in Programs.****R460-5-1. Mortgage Lenders.**

UHC may terminate the eligibility of a mortgage lender to participate in UHC's programs if UHC finds that a mortgage lender:

(1) has failed to comply with the provisions of the Act or the rules, guidelines, policies or procedures adopted thereunder;

(2) has failed to perform any one or more of its obligations arising under any contractual agreement with UHC;

(3) has commenced a voluntary case under any chapter of the Federal Bankruptcy Code, or has consented to, or has failed to controvert in a timely manner, the commencement of an involuntary case against the mortgage lender under such code, or has initiated or suffered any proceeding of insolvency under any other federal or state receivership law, or made any common law assignment for the benefit of creditors or written admission of its inability to pay debts generally as they become due;

(4) has failed to comply with any state or federal regulatory requirement relating to the mortgage lender's financial condition or operating performance;

(5) has suffered the appointment, by decree or order of a court, agency or supervisory authority having jurisdiction in the premises, of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties, or for the termination or liquidation of its affairs;

(6) has consented to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties.

**R460-5-2. Servicers (Reserved).**

Reserved.

**R460-5-3. Other Participants.**

(1) UHC may terminate the eligibility of a participant to participate in UHC's programs if UHC finds that a participant:

(a) has made or procured to be made any false statement for the purpose of influencing in any way an action of UHC or any other participant;

(b) has falsely advertised, made misleading or false offers, or otherwise attempted to induce persons to participate in UHC programs when program requirements cannot be met or have not been represented accurately;

(c) has represented, either orally or in writing or advertising, that UHC mortgage loans are available at a specified interest rate when such participant either knew or reasonably should have known that UHC mortgage loans are not available at such rate;

(d) has provided funds, whether by gift or by loan, to unqualified borrowers to enable such borrowers to obtain a mortgage loan or other benefits of a UHC program;

(e) has violated a law, regulation or procedure relating to an application for a mortgage loan or other benefits of a UHC program or relating to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(f) has been debarred or suspended or issued a limited denial of participation from a federal housing program;

(g) has been convicted of or held liable in a civil judgment for any of the following:

(i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(ii) forgery, falsification or destruction of records, making

false statements, making false claims, or obstruction of justice;

(iii) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person;

(h) has been determined to be "not in good standing" as detailed in the current-year Qualified Allocation Plan utilized by UHC and its development partners for the housing credit and multifamily bond programs.

(2) For purposes of determining the scope of a participant's ineligibility to participate in UHC programs, conduct may be imputed as follows:

(a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, employee, partner, joint venturer or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, employee, partner, joint venturer or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) The eligibility of an affiliate or organizational element of a participant may be terminated solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the action. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party, or by an entity that itself is controlled by the primary sanctioned party, is on the affiliate or organizational element.

(4) Ineligibility shall be for a period commensurate with the seriousness of the cause. Ineligibility generally should not exceed three years. Where circumstances warrant, a longer period of ineligibility may be imposed. If a suspension precedes a determination of ineligibility, the length of the suspension period shall be considered in determining the length of the ineligibility period.

(5) The president or other designated officer of UHC may suspend a participant for any of the causes set forth in R460-5-1 or R460-5-3(1) which shall immediately exclude a participant from participating in transactions involving UHC programs for a temporary period not to exceed 12 months.

(a) Suspension is a serious action to be imposed only when there exists adequate evidence of one or more of the causes set out in R460-5-1 or R460-5-3(1) and immediate action is necessary to protect the public interest.

(b) In assessing the adequacy of the evidence, the president of UHC shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result of all available evidence.

(c) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue but in any event shall be for no longer than 12 months.

(d) Suspension shall be made effective by advising the participant, and any specifically named affiliates, electronically via email or facsimile and by certified mail, return receipt requested, of each of the following:

(i) suspension is being imposed;

(ii) the cause relied upon under R460-5-1 or R460-5-3(1) for imposing suspension;

(iii) the suspension is for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue; and

(iv) the right to request within 30 days, in writing, a hearing, either oral or on the basis of any written submissions by the respondent.

(e) Within 30 days of receipt of a notice of suspension, a suspended participant, including any affiliate, desiring a hearing shall file a written request for a hearing with UHC. If a hearing is requested, it shall be held in accordance with R460-6-3.3.

(6) UHC shall compile and maintain a list of all persons or entities whose eligibility to participate in UHC's programs has been terminated or suspended. The list shall include the following items:

(a) the names and addresses of all ineligible and suspended persons or entities;

(b) the type of action;

(c) the cause for the action;

(d) the scope of the action;

(e) any termination date for each listing;

(f) the name and telephone number of UHC point of contact for the action.

(7) Before resorting to adjudicative proceedings under R460-6, UHC may issue a cease and desist order, advising a participant of present actions by the participant that violate this rule, and ordering the participant to cease and desist such actions, subject to further sanctions.

(8) UHC may also refer a case involving a participant to the Utah Department of Commerce, or any other state or federal agency, for further action.

(9) UHC may settle a case at any time.

(10) UHC and a participant may agree to a voluntary exclusion of a participant from a specific program or project.

**KEY: housing finance**

**November 27, 2012**

**35A-8-711**

**Notice of Continuation September 28, 2012**

**35A-8-712**

**R460. Housing Corporation, Administration.****R460-8. Americans with Disabilities Act (ADA) Complaint Procedures.****R460-8-1. Authority and Purpose.**

(1) UHC, pursuant to 28 CFR 35.107 adopts and publishes within this rule, complaint procedures providing for prompt and equitable resolution of complaints filed according to Title II of the Americans With Disabilities Act, as amended.

(2) The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, as amended, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

**R460-8-2. Filing of Complaints.**

(1) Any qualified individual (defined as an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by UHC; also, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires) may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) The complaint shall be filed timely to assure prompt, effective assessment and consideration of the facts, but no later than 90 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the president of UHC or the president's appointed ADA coordinator in writing or in another accessible format suitable to the complainant.

(4) Each complaint shall include the following:

- (a) the complainant's name and mailing address;
- (b) the nature and extent of the complainant's disability;
- (c) a description of UHC's alleged discriminatory action in sufficient detail to inform UHC of the nature and date of the alleged violation;
- (d) a description of the action and accommodation desired; and
- (e) a signature of the complainant or by his or her legal representative.

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

**R460-8-3. Investigation of Complaint.**

(1) The ADA coordinator shall investigate each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R460-8-2(4) if it is not made available by the complainant.

(2) When conducting the investigation, the ADA coordinator may seek assistance from UHC's legal counsel and human resource staff in determining what action, if any, shall be taken on the complaint. The coordinator will consult with the president before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

**R460-8-4. Issuance of Decision.**

(1) Within 30 days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.

(2) If the ADA coordinator is unable to reach a decision within the 30 day period, he shall notify the complainant in

writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

**R460-8-5. Appeals.**

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

(2) The appeal shall be filed in writing with the president or a designee other than the ADA coordinator.

(3) The filing of an appeal shall be considered as authorization by the complainant to allow review of all information, including information classified as private or controlled, by the president or designee.

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

(5) The president or designee shall review the factual findings of the investigation and the complainant's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The president may consult with legal counsel and/or the human resource department before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

(6) The decision shall be issued within 45 days after receiving the appeal and shall be in writing or in another suitable format to the individual.

(7) If the president or his designee is unable to reach a decision within the 30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R460-8-6. Classification of Records.**

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

**R460-8-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Antidiscrimination Act (see Utah Code 34A-5); the Federal ADA Complaint Procedures (28 CFR 35 Subpart F); or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: housing finance****November 27, 2012****Notice of Continuation September 28, 2012****35A-8-711**



**R495. Human Services, Administration.****R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.****R495-861-1. Authority and Purpose.**

A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.

**R495-861-2. Requirements for Local Discretionary Social Services Block Grant Funds.**

A. Social Services Block Grant funds allocated to local governments by the Legislature are contracted to either counties or associations of government. These funds must be used to provide services to eligible persons as described in the Utah State Social Services Block Grant Plan. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds shall be allocated to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of \$54,000.00.

2. Each area with less than 150,000 population will receive a base of \$34,000.00.

3. The remainder of the money will be allocated based on the percentage each areas' population is of the state population.

C. Each local government shall be required to provide a 25 percent match for Discretionary Social Services Block Grant funds.

**KEY: social services, match requirement  
January 30, 2008  
Notice of Continuation November 6, 2012**

**62A-1-114**

**R512. Human Services, Child and Family Services.**

**R512-204. Child Protective Services, New Caseworker Training.**

**R512-204-1. Purpose and Authority.**

(1) Pursuant to Section 62A-4a-107, the Division of Child and Family Services (Child and Family Services) mandates that before assuming significant independent casework responsibilities, all caseworkers shall successfully complete the core curriculum training.

(2) Section 62A-4a-102 gives Child and Family Services rulemaking authority.

**R512-204-2. Conflict Training.**

(1) The child welfare training coordinator for Child and Family Services is charged with the responsibility for ensuring that the core curriculum is inclusive of information about working with families where there is a conflictual relationship born out of divorce proceedings. This training must include information on fraudulent reporting in Child Protective Services investigations. Other training information must be provided that assists the caseworker in using a variety of techniques to develop a complete picture of the family dynamics and how this may impact the information gathered and the conclusions reached at the end of an investigation.

**KEY: child welfare, child abuse, caseworker training**

<b>October 22, 2009</b>	<b>62A-4a-105</b>
<b>Notice of Continuation November 15, 2012</b>	<b>62A-4a-107</b>
	<b>62A-4a-102</b>

**R539. Human Services, Services for People with Disabilities.****R539-1. Eligibility.****R539-1-1. Purpose.**

- (1) The purpose of this rule is to provide:
- (a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and
- (b) notice to Applicants of hearing rights and the hearing process.

**R539-1-2. Authority.**

- (1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.
- (2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

**R539-1-3. Definitions.**

- (1) Terms used in this rule are defined in Section 62A-5-101.
- (2) In addition:
- (a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;
- (b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;
- (c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;
- (d) "Department" means the Department of Human Services;
- (e) "Division" means the Division of Services for People with Disabilities;
- (f) "Form" means a standard document required by Division rule or other applicable law;
- (g) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;
- (h) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;
- (i) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;
- (j) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;
- (k) "Region" means one of four geographical areas of the State of Utah referred to as central, eastern, northern or western;
- (l) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;
- (m) "Related Conditions" means a severe, chronic disability that meets the following conditions:
- (i) It is attributable to:
- (A) Cerebral palsy or epilepsy; or
- (B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.
- (ii) It is manifest before the person reaches age 22.
- (iii) It is likely to continue indefinitely.
- (iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction
- (F) Capacity for independent living.
- (n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;
- (o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah;
- (p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;
- (q) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;
- (r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and
- (s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

**R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.**

- (1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(9).
- (2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.
- (a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.
- (b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.
- (c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).
- (d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.
- (e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.
- (f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, rehabilitative, or residential issues and/or who has been declared

legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with intellectual disability as per R539-1-3 or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant

or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

#### **R539-1-5. Medicaid Waiver for People with Intellectual Disability or Related Conditions.**

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

#### **R539-1-6. Non-Waivered Services for People with Physical Disabilities.**

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order

to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

#### **R539-1-7. Medicaid Waiver for People with Physical Disabilities.**

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

#### **R539-1-8. Non-Waiver Services for People with Brain Injury.**

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury (by a licensed physician) according to the International Classifications of Diseases, 9th Revision, (ICD 9 CM). The following codes listed below qualify for ABI services:

047.9--aseptic meningitis (unspecified viral meningitis)  
290 - 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)

290.4--vascular dementia  
290.10 Prehensile dementia, uncomplicated  
293.9--psychotic, post traumatic brain injury syndrome  
294.0--amnesia  
294.9--unspecified persistent mental disorders due to conditions classified elsewhere

294.9--with psychotic reaction  
294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off

310.0 - 310.9 nonpsychotic disorder, brain damage  
310.0--frontal lobe syndrome  
310.1--mild memory loss or lack following organic brain damage

310.1--personality change due to conditions classified elsewhere

310.2--post concussion syndrome  
310.2--post contusion syndrome, includes encephalopathy  
310.2--post contusion syndrome, includes TBI  
310.2--post contusion syndrome, includes TBI

310.2--post traumatic brain injury  
310.2--post traumatic brain injury syndrome  
310.8 - 310.9--other nonpsychotic mental disorder, following organic brain damage

310.8--other specified mental disorder following organic brain damage

310.8--other specified nonpsychotic mental disorders following organic brain damage

310.9--organic brain syndrome  
310.9--Organic brain syndrome  
310.9--organic brain syndrome (chronic or acute)  
310.9--unspecified nonpsychotic mental disorder following organic brain damage

320.9--meningitis, bacterial  
322.0--meningitis, nonpyogenic  
322.2--meningitis, chronic  
322.9--meningitis

323.0 - 323.82--choose to pick cause of encephalitis, not 323.9

324.0 - 324.9--Intracranial and intraspinal abscess  
325 Phlebitis and thrombophlebitis of intracranial venous sinuses

326 Late effects of intracranial abscess or pyogenic infection

348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)

348.1--anoxic brain damage  
349.82 Toxic encephalopathy  
430--subarachnoid hemorrhage  
431--intracerebral hemorrhage  
432.0--hematoma, non-traumatic brain

432.1--subdural hematoma  
432--other and unspecified intracranial hemorrhage

433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)

434 Occlusion of cerebral arteries (only if 5th digit is 1)

436--brain or cerebral, acute seizure; need another diagnosis in combination

438 - 438.89 Late effects of cerebrovascular disease (excluding 438.9)

780.93--Memory loss amnesia -only in combination with an E Code - (excludes 310.1 Mild Memory Disturbance due to organic brain damage) need an E code secondary to cause

List codes from 800 - 804 then 5th digit list only those that are 2 - 9 exclude 0 to 1(excluding 802's)

800.0--closed skull fracture, vault (parietal, frontal, vertex)  
800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion

800.1--closed skull fracture, vault with cerebral contusion  
800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage

800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage

800.2--closed skull fracture, vault with epidural, extradural hemorrhage

800.2--closed skull vault fracture with subdural hemorrhage

800.3--closed skull fracture, vault with intracranial hemorrhage

800.3--Closed skull fx with other and unspecified intracranial hemorrhage

800.4--closed skull fracture, vault with intracranial injury  
800.4--closed skull fx with intracranial injury of other and unspecified nature

800.5 - 800.9--Open skull fracture, vault (parietal or frontal area)

800.6--open skull fx with cerebral laceration and contusion  
800.7--open skull fx with subarachnoid, subdural, and extradural hemorrhage

800.7--open skull vault fracture with subdural hemorrhage  
800.8--open skull fx other and unspecified intracranial hemorrhage

800.9--Open skull fx with intracranial injury of other and unspecified nature

800.9--open vault fracture with intracranial injury of other and unspecified nature

801.0 - 801.9 Fracture of base of skull  
801.0--closed skull fracture, base

801.1--closed skull fracture, with cerebral hemorrhage  
801.2--closed skull base fracture with subdural hemorrhage

801.2--closed skull fracture with epidural hemorrhage  
801.3 - 801.4--closed skull fracture, base with intracranial hemorrhage

801.5 - 801.9--open skull fracture, base of skull  
801.7--open skull base fracture with subdural hemorrhage

803.0 - 804.9--Other and unqualified skull fractures (includes single or multiple fx)

803.0--closed skull fracture with facial injuries  
803.1--closed skull fracture with cerebral contusion

803.2--closed skull fracture with epidural, extradural hemorrhage

803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage

803.2--other and unqualified skull fractures, closed, subdural hemorrhage

803.3--closed skull fracture with intracranial hemorrhage  
803.4--closed skull fracture with intracranial injury

803.5 - 803.9--open skull fracture, other and unqualified  
803.7--other and unqualified skull fractures, open, subdural hemorrhage

804.2--multiple fractures skull and face, closed, subdural hemorrhage

804.5 - 804.9--Open skull fracture, multiple fractures skull and face

804.7--multiple fractures skull and face, open, subdural

hemorrhage

List codes from 850-854 then 5th digit list only those that are 2 - 9 exclude 0 to 1

850.1 - 850.5--concussion with loss of conscious  
851.0 - 851.9--cerebral laceration and contusion, open or closed, specifies site

851.0--cerebral contusion without mention open wound  
851.2--cerebral laceration without mention of open wound

851.4 or 851.6--cerebral or brain stem contusion s mention open wnd

851.4--contusion brain stem  
851.8--cerebral contusion (851.0 - 851.9--specify site, open, closed)

851.8--contusion brain  
851.8--other and unspecified cerebral contusion

851.8--other unspecified cerebral s mention open wound  
852.0, 852.2, 854.4 hemorrhage s mention open wound

852.0 - 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury

852.0--subarachnoid hemorrhage  
852.2 - 852.3--subdural hemorrhage, injury, without mention open, open

852.2--subdural hemorrhage following injury, s mention open wound

852.2--traumatic brain injury, subdural  
852.3--subdural hemorrhage following injury, with open wound

852.4 - 852.5--extradural hemorrhage injury, without mention open

853.0 other intracranial hemorrhage after injury s mention open wound

853.0 - 853.1--other and unspecified intracranial hemorrhage following injury

853.0--hematoma, traumatic brain  
854.0 - 854.1--Intracranial injury of other and unspecified nature

854.0--injury intracranial  
854.0--intracranial hemorrhage due to injury

854.1--intracranial injury of other and unspecified nature s mention open w

905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 - 9 exclude 0 - 1)

906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 - 9 exclude 0 - 1)

907.0--late effect of intracranial injury (5th digit list only those that are 2 - 9 exclude 0 - 1);

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's

brain injury resulted in substantial limitation of the ability to:

- (i) provide personal protection;
- (ii) provide necessities such as food, shelter, clothing, or mental or other health care;
- (iii) obtain services necessary for health, safety, or welfare;
- (iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

#### **R539-1-9. Medicaid Waiver for People with Acquired Brain Injury.**

- (1) Pursuant to R414-61-2, matching federal funds may be

available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

#### **R539-1-10. Graduated Fee Schedule.**

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Intellectual Disability or Related Conditions Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula:  $(\text{assets} + \text{income}) / \text{by the total number of family members} = \text{available income}$ ). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver,

who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

**R539-1-11. Social Security Numbers.**

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Utah Administrative Code, Rule R414-302-5 and 42 CFR 435.910, 1997 ed., which is incorporated by reference.

**KEY: human services, disabilities, social security numbers**  
**April 1, 2008 62A-5-103**  
**Notice of Continuation November 5, 2012 62A-5-105**



**R539. Human Services, Services for People with Disabilities.****R539-11. Family Preservation Pilot Program.****R539-11-1. Purpose and Authority.**

- (1) The purpose of this rule is to provide:
  - (a) procedures and standards for the determination of eligibility for the Division's pilot program to provide Family Preservation Services for Persons on the Division's Waiting List as specified in R539-2-4.
- (2) This rule is authorized by Section 62A-5-103.2

**R539-11-2. Definitions.**

Terms used in this rule are defined in Section 62A-5-101, and

"Person": Individual who meets eligibility requirements in Rule R539-1.

"Active Status": Has a current Needs Assessment Score on Division wait list.

"Participate fully": Follow through with assignments and accept guidance and clinical judgment regarding treatment issues of Professional and clinical team. Also to complete Self Inventory Assessments.

"Time-limited": Workshops run for six weeks. Follow up services will not exceed six weeks following the end of the workshops. Total time of participation for any one family is three months.

**R539-11-3. Person's Eligibility.**

(1) A person who meets the eligibility requirements listed in Section 62A-5-103.2 may participate in the Family Preservation Pilot Program provided that:

the person agrees to enter services under the conditions listed in Section 62A-5-103.2,

the person agrees to use an approved provider.

The person is currently in active status on the Division wait list.

**R539-11-4. Family's Eligibility.**

(1) A family who has a person who meets the eligibility requirements listed in Rule R539-1 living in their home, may participate in the Family Preservation Pilot Program provided:

The family agrees to have their wait list needs assessment re-evaluated approximately six months after completing participation in pilot program.

The family agrees to sign a participation agreement agreeing to participate fully in pilot program.

The family agrees to time-limited services.

The family agrees to access services that can be purchased from providers, through Division contracted providers.

**R539-11-5. Priority.**

People will be served in the order in which they apply to participate in the pilot program in the respective geographical area in which they live and as space becomes available in workshops.

**R539-11-6. Service Brokering.**

(1) Persons eligible for the Supported Employment Pilot Program may also use Service Brokering services.

**KEY: disabilities**

**November 14, 2007**

**62A-5-103.2**

**Notice of Continuation November 5, 2012**

**R590. Insurance, Administration.****R590-152. Health Discount Programs and Value Added Benefit Rule.****R590-152-1. Authority.**

This rule is promulgated by the commissioner under 31A-8a-210, which authorizes the commissioner to enforce Chapter 8a and protect the public interest.

**R590-152-2. Purpose and Scope.**

(1) The purpose of this rule is to describe initial and renewal license procedures, fees, and other authorized charges, required and prohibited practices, advertising and marketing activity, disclosure requirements, provider agreements, dispute resolution, and record keeping.

(2) This rule applies to health discount programs, health discount program operators, and health discount program marketers.

(3) This rule applies to a value added benefit provided by a person licensed under Title 31A, Chapters 7 or 8.

**R590-152-3. Definitions.**

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-8a-102 and the following:

(1) "Administration of the health discount program" means the processes to solicit members, enroll members, maintain the membership, resolve disputes with members, disenroll members, and collect or refund fees and other authorized charges.

(2) "Authority to do business in this state" means having other applicable licenses as required by statute and operating within the scope of such licenses.

(3) "Health discount program marketer" means a person or entity, including a private label entity, that markets or distributes a health discount program but may also operate the marketed or distributed health discount program.

(4) "Private label entity" means an entity that purchases a health discount program from a health discount program operator and issues or markets the obtained health discount program under the private label entity's name or logo.

(5) "Prominently" means not less than 14-point type or no smaller than the largest type on the page if larger than 12 point type.

**R590-152-4. General Information.**

(1) The commissioner may examine, audit, or investigate the business and affairs of any health discount program operator or a licensed health discount program marketer or any person the commissioner believes may be operating or marketing a health discount program.

(2) A health discount program, a health discount program operator, or a health discount program marketer that offers an insurance benefit as part of a health discount program or in addition to a health discount program must comply with statutes and rules pertaining to the solicitation, negotiation, and sale of insurance in Utah that are otherwise applicable to the altering of such benefit.

**R590-152-5. Licensing (Application, Initial, Renewal).**

(1) The following must be licensed prior to offering a health discount program:

(a) a health discount program operator; or

(b) a health discount program marketer. A licensee licensed under Chapters 7 or 8 does not require a license as a health discount program operator or health discount program marketer when offering valued added benefits as part of their insurance product package.

(2) The "Application for Health Discount Program Operator or Health Discount Program Marketer" must be completed and submitted with the appropriate fee.

(3) The commissioner may deny an application from a health discount program operator or a health discount program marketer if the applicant would not be in compliance with Chapter 31A-8a because the applicant, in this or any other jurisdiction, for a matter dealing with a health discount program is:

(a) under investigation; or

(b) has been found in violation of a statute or regulation.

(4) A licensed health discount program operator must notify the commissioner each time a health discount program marketer or private label entity is added or deleted during the annual licensure period.

(5) Annual licensure period.

(a) A license issued under this section is for one annual period which expires each December 31st.

(b) A licensee desiring to continue to do business in this state must renew its license prior to December 31st each year by submitting an Application for Health Discount Program Operator or Health Discount Program Marketer and paying the required fee.

**R590-152-6. Fees and Other Authorized Charges.**

(1) A health discount program operator may provide discounts or free services through contracted providers to subscribers in exchange for a periodic payment to the program or as a benefit in connection with membership in a particular group.

(2) A health discount program operator may charge:

(a) a non-refundable one-time enrollment charge; and

(b) a refundable periodic fee.

(3) A health discount program operator that charges fees for a time period in excess of one month must, in the event of cancellation of the membership by the health discount program operator, make a pro-rata refund of the periodic fees paid by the member.

**R590-152-7. Required Practices.**

(1) A health discount program operator must have an active toll-free telephone number for members to call.

(2) Face to face, paper, telephone, and electronic communications with clients or potential clients must state that the health discount program is a discount plan and not insurance.

(3) When a health discount program operator or a health discount program marketer, markets or sells a health discount program together with any other product that can be purchased separately, including insured benefits, an itemized list of the fees or premiums for each individual product must be provided in writing to the client at solicitation.

(4) Information available to a health discount program member via a health discount program operator's or marketer's web page must be updated no later than 30 days from a change.

**R590-152-8. Value Added Benefit.**

(1) Any value added benefit must actually exist and a copy of the contract verifying such existence must be available upon request to the commissioner.

(2) Prior to any offering of a value added benefit, a person licensed under Title 31A, Chapter 7 or 8, shall:

(a) file with the commissioner a value added benefits list that includes the following:

(i) the insurer's name and address;

(ii) the insurer's policy form number(s) to which the value added benefit applies; and

(iii) a description of the benefits offered.

(b) comply with Sections R590-152-10 and 11, if providing a member discount card.

**R590-152-9. Prohibited practices.**

(1) A health discount program operator may not make any payments to providers for:

- (a) participation in the health discount program;
- (b) capitation payments;
- (c) signing fees;
- (d) bonuses; or
- (e) other forms of compensation.

(2) A health discount program operator may not offer any insurance benefits unless licensed as an insurance producer and contracted and appointed by the insurer providing the insurance benefits.

**R590-152-10. Advertising and Marketing.**

(1) The format and content of any advertisement shall be sufficiently complete and clear as to avoid deceiving or misleading the reader, viewer, or listener.

(2) An advertisement of any insured product or benefit must comply with applicable provisions of Subsections 31A-23a-102 (12) and (13) and Rule R590-130, Rules Governing Advertisements of Insurance.

(3) A health discount program operator must approve in writing all advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program marketer marketing a health discount program operator's health discount program.

(4) All advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program operator and the health discount program operator's health discount program marketer must be available to the commissioner upon request.

(5) The health discount program operator must have an executed written agreement with a health discount program marketer prior to the health discount plan marketer marketing, promoting, selling, or distributing a health discount program.

**R590-152-11. Disclosures.**

(1) A health discount program operator must provide the disclosures required by Section 31A-8a-205.

(2) The membership card shall prominently state: "This is not health insurance."

(3) Disclosure materials provided to a purchaser or potential purchaser must include:

- (a) membership materials;
- (b) new enrollee information;
- (c) a printed list of providers, or access to the health discount program operator's web page, that have agreed by written contract with the health discount program to accept the program;

(d) a statement that "A health discount program member is responsible for the entire payment of their medical or health care bill after the discount is applied."; and

- (e) the complete terms and conditions of any refund policy.

(4) A health discount program operator or health discount program marketer must:

(a) provide a purchaser a 30-day money back guarantee, which allows the purchaser to terminate the contract and receive a full refund of any periodic fee paid; and

(b) the 30-day period must commence when the purchaser receives the membership materials.

**R590-152-12. Contracts.**

(1) A provider agreement between a health discount program operator and a provider network shall require:

(a) the provider network to have a written agreement with each provider in the network authorizing the provider network to contract with a health discount program operator on behalf of the provider; and

(b) the health discount program operator to inform each provider within the contracted provider network with

information about the health discount program.

(2) A provider agreement between a health discount program operator and another health discount program operator that has contracted with a provider network shall require the contract with the provider network to comply with Subsection (1).

**R590-152-13. Dispute Resolution Procedures.**

A health discount program operator must:

(1) file its dispute resolution procedures with the commissioner pursuant to Section 31A-8a-203; and

- (2) comply with its filed dispute resolution procedures.

**R590-152-14. 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.

**R590-152-15. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

**R590-152-16. Severability.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**KEY: insurance, medical discount program**

**January 20, 2011**

**Notice of Continuation November 7, 2012**

**31A-1-103**

**31A-2-201**

**R590. Insurance, Administration.****R590-242. Military Sales Practices.****R590-242-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-23a-402(8)(a) and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

**R590-242-2. Purpose.**

(1) The purpose of this rule is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

**R590-242-3. Scope.**

This rule shall apply only to the solicitation, negotiation, or sale of any life insurance product, including annuities, by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

**R590-242-4. Findings.**

The commissioner finds that the acts prohibited by this rule are misleading, deceptive, unfairly discriminatory, and provide an unfair inducement.

**R590-242-5. Exemptions.**

(1) This rule shall not apply to solicitations, negotiations, or sales involving:

- (a) credit insurance;
- (b) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
- (c) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
- (d) individual stand-alone health policies, including disability income policies;
- (e) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;
- (f) life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
- (g) 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 Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;
  - (iii) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
  - (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) prearranged funeral contracts.

(2) Nothing herein shall be construed to nullify the ability of nonprofit organizations to educate members of the United

States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(3) For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this rule in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

**R590-242-6. Definitions.**

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

(1) "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component, National Guard and Reserve, while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense (DoD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

(4) "General Advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(5) "Known" or "Knowingly" means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

- (a) is a service member; or
- (b) is a service member with a pay grade of E-4 or below.
- (6) "Military Installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(7) "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(8) "Service Member" means any active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.

(9) "Side Fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- (a) accumulated value or cash value or secondary guarantees provided by a universal life policy;
- (b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (c) a premium deposit fund which:
  - (i) contains only premiums paid in advance which

accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(10) "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(11) "United State Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

**R590-242-7. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.**

(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation, negotiation, or sale of life insurance are declared to be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices or advertisements.

(g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

**R590-242-8. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location.**

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay

to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. Section 4301 et seq. and the rules promulgated thereunder; and

(ii) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection 7(1)(b).

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation, negotiation, or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(a) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity.

(i) Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".

(ii) Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning.

(iii) Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial

Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers, which is false, misleading or deceptive.

(c) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.

(e) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(i) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(ii) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of R590-177, Life

Insurance Illustrations Rule, shall be deemed sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents.

(ii) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(iii) which, by default, diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(d) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with 31A-22-408, Standard Nonforfeiture Law for Life Insurance.

(e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage which may be excluded.

#### **R590-242-9. 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.

#### **R590-242-10. Enforcement Date.**

The commissioner will begin enforcing the provisions of

this rule on January 1, 2008.

**R590-242-11. Severability.**

If any provision or portion of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

**KEY: insurance, military sales practices**

November 16, 2007

31A-2-201

Notice of Continuation November 7, 2012

31A-23a-402

**R590. Insurance, Administration.****R590-265. Hazardous Financial Condition Rule.****R590-265-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections:

- (1) 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A; and
- (2) 31A-27-503(1)(a)(v) and 31A-27a-101(3)(c), which authorize the commissioner to make rules pertaining to an insurer deemed to be in hazardous financial condition or potentially hazardous financial condition.

**R590-265-2. Purpose and Scope.**

(1) The purpose of this rule is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to:

- (a) their policyholders;
- (b) creditors; or
- (c) the general public.

(2) This rule shall not be interpreted to:

- (a) limit the powers granted the commissioner by any laws or parts of laws of this state; or
- (b) supersede any laws or parts of laws of this state.

**R590-265-3. Standards.**

The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors or the general public. The commissioner may consider:

- (1) adverse findings reported in:
  - (a) financial condition examination reports;
  - (b) market conduct examination reports;
  - (c) audit reports; and
  - (d) actuarial opinions, reports or summaries;

(2) the National Association of Insurance Commissioners' Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(3) the insurer's provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to:

- (a) investment earnings on such assets; and
- (b) considerations anticipated to be received and retained under such policies and contracts;

(4) an assuming reinsurer's ability to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account:

- (a) the insurer's cash flow;
- (b) classes of business written; and
- (c) the financial condition of the assuming reinsurer;

(5) the insurer's operating loss in the last 12 month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividend paid to shareholders, if greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(6) the insurer's operating loss in the last 12 month period or any shorter period of time, excluding net capital gains, if it is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) an insolvent or nearly insolvent or delinquent in payment of its monetary obligations, obligor or any entity within the insurer's insurance holding company system, when in the opinion of the commissioner it may also affect the solvency of

the insurer;

(8) contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) any "controlling person" of an insurer who is delinquent in transmitting to, or payment of, net premiums to the insurer;

(10) the age and collectability of receivables;

(11) whether management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) the insurer's failure to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) the insurer's failure to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(14) whether management of an insurer has:

- (a) filed any false or misleading sworn financial statement;
- (b) released any false or misleading financial statement to lending institutions or to the general public;

(c) made a false or misleading entry or omitted an entry of material amount in the books of the insurer;

(15) a lack of adequate financial and administrative capacity to meet obligations in a timely manner due to the insurer's rapid growth;

(16) cash flow or liquidity problems currently identified or expected in the foreseeable future;

(17) insurer reserves that do not comply with minimum standards established by the state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(18) persistent under reserving resulting in adverse development;

(19) transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, if the transactions do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

(20) any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

**R590-265-4. Commissioner's Authority.**

(1) For the purposes of making a determination of an insurer's financial condition under this rule, the commissioner may:

(a) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws and regulations;

(c) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(d) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next 12 month period.

(2) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state



may be hazardous to its policyholders, creditors or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

- (a) reduce the total amount of present and potential liability for policy benefits by reinsurance;
- (b) reduce, suspend or limit the volume of business being accepted or renewed;
- (c) reduce general insurance and commission expenses by specified methods;
- (d) increase the insurer's capital and surplus;
- (e) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policy holders;
- (f) file reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;
- (g) limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- (h) document the adequacy of premium rates in relation to the risks insured;
- (i) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;
- (j) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;
- (k) provide a business plan to the commissioner in order to continue to transact business in the state; or
- (l) notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

(3) If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(4) An insurer subject to an order under Subsection (1) may request a hearing to review that order. The notice of hearing shall:

- (a) be served upon the insurer pursuant to 31A-27-503;
- (b) state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order.

(5) Unless mutually agreed between the commissioner and the insurer, all hearings under Subsection (4) shall:

- (a) occur not less than 10 days nor more than 30 days after notice is served;
- (b) be either in Salt Lake County or in some other place convenient to the parties designated by the commissioner.

(6) The commissioner shall hold all hearings under Subsection (4) privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

#### **R590-265-5. Judicial Review.**

Any order or decision of the commissioner shall be subject to review in accordance with 31A-27-503(4)(b) at the instance of any party to the proceedings whose interests are substantially affected.

#### **R590-265-6. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 30 days from the rule's effective date.

#### **R590-265-7. 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: insurers, hazardous financial conditions  
November 9, 2012**

**31A-2-201  
31A-27-503(1)(a)(v)  
31A-27a-101(3)(c)**

**R597. Judicial Performance Evaluation Commission, Administration.****R597-3. Judicial Performance Evaluations.****R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges not on the supreme court standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.

(b) For supreme court justices standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.

(c) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(d) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

(4) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first four months of the retention cycle.

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(c) The commission may select retention survey questions

from among the midterm survey questions.

(d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

- (I) juvenile probation and intake officers;
- (J) other courthouse staff, as appropriate;
- (K) Administrative Office of the Courts staff.
- (f) Juvenile Court Professionals
- (i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.
- (ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:
  - (A) Division of Child and Family Services ("DCFS") child protection services workers;
  - (B) Division of Child and Family Services ("DCFS") case workers;
  - (C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;
  - (D) Juvenile Justice Services ("JJS") case managers;
  - (E) Juvenile Justice Services ("JJS") secure care staff;
  - (F) Others who provide substantive professional services on a regular basis to the juvenile court.
- (iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.
- (3) Anonymity and Confidentiality
  - (a) Definitions
    - (i) Anonymous.
      - (A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.
      - (B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.
      - (C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.
    - (ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.
    - (iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.
    - (iv) The summary form of survey results consists of quantitative survey data in aggregated form.

### **R597-3-3. Courtroom Observation.**

- (1) General Provisions.
  - (a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.
  - (b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.
  - (c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.
- (2) Courtroom Observers.
  - (a) Selection of Observers
    - (i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.
    - (ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.
  - (b) Selection Criteria. Observers with a broad and varied

range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

- (i) persons with a professional involvement with the state court system, the justice courts, or the judge;
- (ii) persons with a fiduciary relationship with the judge;
- (iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
- (iv) persons lacking computer access or basic computer literacy skills;
- (v) persons currently involved in litigation in state or justice courts;
- (vi) convicted felons;
- (vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.
- (c) Terms and Conditions of Service
  - (i) Courtroom observers shall serve at the will of the commission staff.
  - (ii) Courtroom observers shall commit to one one-year term of service.
  - (iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.
  - (iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.
- (d) Training of Observers
  - (i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.
  - (ii) Elements of the training program shall include:
    - (A) Orientation and overview of the commission process and the courtroom observation program;
    - (B) Classroom training addressing each level of court;
    - (C) In-court group observations, with subsequent classroom discussions, for each level of court;
    - (D) Training on proper use of observation instrument;
    - (E) Training on confidentiality and non-disclosure issues;
    - (F) Such other periodic trainings as are necessary for effective observations.
- (3) Courtroom Observation Program.
  - (a) Courtroom Requirements
    - (i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.
    - (ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.
    - (iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.
    - (iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.
  - (b) Travel and Reimbursement
    - (i) All travel must be preapproved by the executive director.
    - (ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.
    - (iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

**R597-3-4. Minimum Performance Standards.**

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

**R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**  
**November 16, 2012**

**78A-12**

**R628. Money Management Council, Administration.**  
**R628-18. Conditions and Procedures for Use of Interest Rate Contracts.**

**R628-18-1. Authority.**

This rule is issued pursuant to Section 51-7-18(2)(b)(viii).

**R628-18-2. Purpose.**

The purpose of this rule is to establish conditions and procedures for the use by public entities of Contracts (as defined in R628-18-3). This rule does not cover instruments such as futures, options, (other than options to enter into swaps), calls or puts entered into for investment purposes, as they are not legal investments under the Act. This rule provides criteria for the use of Contracts, permitted contract terms and the type of contract form to be used. This rule also provides credit criteria for depository institutions, broker dealers, insurance companies and other entities that are counterparties to Contracts, reporting requirements on Contracts and penalties for violation of this rule.

**R628-18-3. Definitions.**

For purposes of this rule:

(1) Contract(s) means: interest rate exchange or swap contracts, cash flow exchange or swap contracts, any derivatives of these contracts including forward swaps and options to enter into swaps, and interest rate floors, caps and collars that are entered into by a public entity.

(2) Counterparty means: any party to a Contract who has obligations or rights thereunder.

(3) Governing Board means: the board, town council, city council, etc. of a public entity which would oversee the issuing of debt and the management of that debt.

(4) Intermediary Contract means: A Contract that is structured such that any payment owed by any counterparty to any other counterparty is to be made through a person or entity that is not a counterparty to the Contract, where the funds constituting such payment are either, (i) subject to the control of such person or entity; or (ii) subject to execution by the creditors of such person or entity.

(5) Intermediary means: a person or entity that is not a counterparty to a given Intermediary Contract through whom any payment is to be made by a counterparty to any other counterparty as contemplated under the immediately preceding subsection (4).

(6) Notional Amount means: the dollar amount against which a rate is applied to determine the dollar amount payable or receivable by a counterparty under a Contract.

**R628-18-4. General Requirements.**

Contracts shall be entered into only under the following conditions:

(1) The Governing Board shall first determine that the Contract or arrangement or a program of Contracts: (a) is designed to reduce the amount or duration of payment, rate, spread or similar risk, or (b) is reasonably anticipated to result in a lower cost of borrowing.

(2) Contracts are to be used for the control or management of debt or the cost of servicing debt and not for speculation.

**R628-18-5. Credit Criteria Restriction on Counterparties.**

Public entities may enter into contracts only with the following counterparties:

(1) Any in-state depository institution that meets the criteria of a qualified depository as described in Sections 51-7-3(28), 51-7-18.1 and R628-12.

(2) Any out-of-state depository institution that meets the criteria of R628-10.

(3) Any broker dealer that: (i) is either a primary reporting dealer recognized by the Federal Reserve Bank of New York or

meets the criteria of R628-16-6(B)(5) and (6), without regard to whether the broker dealer has applied for certification or been certified as contemplated under R628-16, and (ii) is rated, or whose parent company is rated, in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20).

(4) Any insurance company whose claims paying ability is rated or that has issued currently outstanding debt that is rated in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20).

(5) Any entity that is directly or indirectly wholly owned by an entity or entities described in any of the immediately preceding subsections (1) through (4).

(6) Any entity that is directly or indirectly wholly owned by a holding company or parent company which directly or indirectly wholly owns any entity described in the immediately preceding subsections (1) through (4).

(7) Any entity in the business of entering into Contracts that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection (7), the Contract's final maturity may not exceed eighteen years if the counterparty is not rated in the highest rating category for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty is not rated in one of the two highest rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

(8) Any entity whose obligations under the Contract with the public entity are fully and unconditionally guaranteed by an entity that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection (8), the Contract's final maturity may not exceed eighteen years if the counterparty's guarantor is not rated in the highest rating category for two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty's guarantor is not rated in one of the highest two rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

**R628-18-6. Authorized Intermediaries.**

A public entity shall not enter into an Intermediary Contract unless each Intermediary thereunder is either:

(1) a qualified depository as defined in Subsection 51-7-3(28);

(2) a permitted depository as defined in Subsection 51-7-3(24); or

(3) a certified dealer as defined in Subsection 51-7-3(2).

**R628-18-7. Terms of the Contract and Type of Contract.**

(1) To eliminate speculation, the Notional Amount of a Contract cannot exceed 115 percent of the par amount of the debt to which such Contract relates. Nothing in these rules shall be deemed to prohibit a public entity from entering into a subsequent Contract to reverse a position taken in a prior Contract so long as the subsequent Contract otherwise complies with these rules.

(2) The final termination date of a Contract shall not be later than 90 days past the final maturity of the debt to which

such Contract relates.

(3) The public entity must use an industry standard contract form approved by the International Swaps and Derivatives Association, Inc., (ISDA), which is currently headquartered in New York City, New York (ISDA), but may make such modifications thereto as are contemplated or permitted by the ISDA form or any ISDA code incorporated therein.

**R628-18-8. Reporting Requirements and Penalty for Violation by a Public Treasurer.**

(1) Pursuant to Subsection 51-7-18.2(2)(d), the public treasurer of each public entity that is a party to any outstanding Contract must submit a report to the council within 30 days after June 30 and December 31 of each year containing the following information as of the immediately preceding June 30 or December 31, as applicable:

- (a) A listing of all outstanding Contracts to which the public entity is a party;
- (b) the Notional amount of each Contract, if applicable;
- (c) the underlying debt to which each Contract relates;
- (d) the type of each Contract e.g., interest rate exchange or swap contract, cash flow exchange or swap contract or, if the Contract is a derivative of the foregoing, forward swap, option to enter into a swap, floor, cap, collar, or other derivative; and
- (e) a description of the basis upon which the public entity's payment obligations are determined under each Contract.

(2) Any public entity that willfully violates the provisions of this rule is guilty of a Class A misdemeanor.

(3) Any public entity that knowingly makes or causes to be made a false statement or report to the council is guilty of a Class A misdemeanor.

**KEY: interest rate swaps, contracts, public finance, bonds  
July 3, 1995 51-7-18(2)(b)(viii)  
Notice of Continuation November 6, 2012**

**R651. Natural Resources, Parks and Recreation.****R651-637. Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt.****R651-637-1. Authorization of a Hunt.**

(1) Hunting of mule deer and bighorn sheep on Antelope Island State Park is authorized, and access on Antelope Island State Park is authorized for the purpose of hunting mule deer and bighorn sheep.

(2) All hunting shall be confined to the designated hunting unit which consists of that portion of approximately 26,000 acres on Antelope Island lying south of the chain link fence, commonly known as the "2000 acre fence" beginning in Farmington Bay and running in a south southwesterly direction and ending at White Rock Bay.

(3) Dates, harvest objectives and other parameters for hunts shall be set annually by the Board utilizing recommendations of Division staff and interested parties.

**R651-637-2. Applicability of Law and Rules.**

Hunting during the Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted in accordance with applicable state law, administrative code, hunting guidebooks of the Utah Wildlife Board, and in accordance with this rule.

**R651-637-3. Season Dates.**

The Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted during legal hunting hours as follows:

(1) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the competitive bid process may hunt during legal hours beginning 30 minutes before official sunrise on November 12 2012 and ending 30 minutes after official sunset on November 21, 2012.

(2) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the public draw process may hunt during legal hours beginning 30 minutes before official sunrise on November 15, 2012 and ending 30 minutes after official sunset on November 21, 2012.

**R651-637-4. Hunting Party Size.**

Each hunter licensed to hunt during the Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt may be accompanied by up to four (4) non-hunting companions. Guides, photographers, packers and all other individuals accompanying the hunter in camp or in the field are included in this limit.

**R651-637-5. Fees.**

(1) Day use fees for licensed hunters and their companions will be waived for the duration of their hunt.

(2) Camping fees for hunters and their companions who desire to camp on Antelope Island during the hunt will be charged per the current fee schedule. All campers shall camp in designated areas as directed by park management.

(3) Commercial activities related to hunt activities shall be individually evaluated and permitted through the Division's established processes.

**R651-637-6. Access.**

(1) Motor vehicle access will be limited to roads open to public use. No off-road, motorized vehicular travel will be allowed.

(2) Off-highway vehicles as defined in Title 41-22-2 UCA are not allowed on Antelope Island.

(3) During the hunt, foot and horse travel, including cross-country foot and horse travel, will be allowed in all areas of the hunting unit.

(4) Foot and horse travel including cross-country foot and

horse travel for the purposes of pre-season scouting is authorized for hunters and their guides. Hunters and guides conducting pre-season scouting shall notify Park Management of their presence on the Island, and shall adhere to instructions provided by Park Management. Standard day use and camping fees shall apply to pre-season scouting visits.

**R651-637-7. Mandatory Orientation.**

A mandatory orientation will be held prior to the hunt at the Antelope Island State Park Visitor Center. All license holders and their guides shall be in attendance at this orientation session.

**R651-637-8. Mandatory Check-in and Check-out.**

All hunters and their companions shall check in with Park Management at the beginning of their hunt and shall check out at the end of their hunt. Instructions on checking in and out will be provided at the mandatory orientation.

**R651-637-9. Handling of Harvested Wildlife.**

The carcasses of all harvested wildlife shall be covered while being transported on Antelope Island or on the Antelope Island Causeway. This includes all parts of the harvested wildlife, including the head.

**KEY: parks, hunting  
November 7, 2012**

**79-4-304**

**R657. Natural Resources, Wildlife Resources.****R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

**R657-9-3. Stamp Requirements.**

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

**R657-9-4. Permit Applications for Swan.**

(1) Swan permits will be issued pursuant to R657-62-23.

**R657-9-5. Tagging Swans.**

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

**R657-9-6. Return of Swan Harvest and Hunt Information.**

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) Late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

**R657-9-7. Firearms.**

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

**R657-9-8. Nontoxic Shot.**

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

**R657-9-9. Use of Firearms on State Waterfowl Management Areas.**

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;



(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

- (d) Emery County - Desert Lake;
- (e) Millard County - Clear Lake, Topaz Slough;
- (f) Tooele County - Timpie Springs;
- (g) Uintah County - Stewart Lake;
- (h) Utah County - Powell Slough;
- (i) Wayne County - Bicknell Bottoms; and
- (j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

#### **R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.**

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furlled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

#### **R657-9-11. Airboats.**

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

- (d) Emery County: Desert Lake
- (e) Millard County: Clear Lake, Topaz Slough
- (f) Tooele County: Timpie Springs
- (g) Uintah County: Stewart Lake
- (h) Utah County: Powell Slough
- (i) Wayne County: Bicknell Bottoms
- (j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

- (a) less than 16 feet in length;
- (b) propelled by a water jet pump; and
- (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

#### **R657-9-12. Motorized Vehicle Access.**

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

#### **R657-9-13. Sinkbox.**

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

#### **R657-9-14. Live Decoys.**

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

#### **R657-9-15. Amplified Bird Calls.**

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

#### **R657-9-16. Baiting.**

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

#### **R657-9-17. Possession During Closed Season.**

No person shall possess any freshly killed migratory game birds during the closed season.

#### **R657-9-18. Live Birds.**

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

#### **R657-9-19. Waste of Migratory Game Birds.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

**R657-9-20. Termination of Possession.**

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

**R657-9-21. Tagging Requirement.**

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

**R657-9-22. Donation or Gift.**

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

**R657-9-23. Custody of Birds of Another.**

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

**R657-9-24. Species Identification Requirement.**

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

**R657-9-25. Marking Package or Container.**

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

**R657-9-26. Migratory Bird Preservation Facilities.**

(1) Migratory bird preservation facility means:

- (i) Any person who, at their residence or place of business and for hire or other consideration; or
- (ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or
- (iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

- (a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of

the person from whom the bird was obtained, and show:

- (i) the number of each species;
  - (ii) the location where taken;
  - (iii) the date such birds were received;
  - (iv) the name and address of the person from whom such birds were received;
  - (v) the date such birds were disposed of; and
  - (vi) the name and address of the person to whom such birds were delivered; or
- (b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

**R657-9-27. Importation.**

A person may not:

- (1) import migratory game birds belonging to another person; or
- (2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

**R657-9-28. Use of Dogs.**

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

**R657-9-29. Season Dates and Bag and Possession Limits.**

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-30. Closed Areas.**

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

- (a) Antelope Island causeway - within 600 feet of either the north or south side.
- (b) Brown's Park - That part adjacent to headquarters.
- (c) Clear Lake - Spring Lake.
- (d) Desert Lake - That part known as "Desert Lake."

(e) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(f) Ogden Bay - Headquarters area.

(g) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(h) Salt Creek - That part as posted known as "Rest Lake."

(i) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(j) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(k) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(l) Great Salt Lake Marina and adjacent areas as posted.

(m) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(n) Salt Lake International Airport - Hunting and shooting prohibited as posted.

#### **R657-9-31. Shooting Hours.**

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

#### **R657-9-32. Falconry.**

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

#### **R657-9-33. Migratory Game Bird Harvest Information Program (HIP).**

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license type;
- (c) name;
- (d) address;
- (e) phone number;
- (f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

#### **R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.**

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

#### **KEY: wildlife, birds, migratory birds, waterfowl**

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**50 CFR part 20**

**R708. Public Safety, Driver License.****R708-48. Ignition Interlock System Program.****R708-48-1. Authority.**

This rule is authorized by Sections 53-3-1004 and 53-3-1007.

**R708-48-2. Purpose.**

The purpose of this rule is to set standards governing the administration and enforcement of the Ignition Interlock System Program in accordance with Title 53, Chapter 3, Part 10.

**R708-48-3. Definitions.**

(1) Terms used in this rule are defined in Section 53-3-1002.

(2) In addition:

(a) "act of moral turpitude" means 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 property;

(b) "business" means an ignition interlock system business established to install, remove and maintain ignition interlock systems as specified in R708-31 Ignition Interlock Systems and includes both the business' primary location and any branch offices;

(c) "department" means the Department of Public Safety created in Section 53-1-103;

(d) "division" means the Driver License Division created in Section 53-3-103;

(e) "install" means any service provided by an ignition interlock installer including the installation or removal of an ignition interlock system and the performance of any type of maintenance or service on an ignition interlock system; and

(f) "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.

**R708-48-4. Requirements for Licensure of Providers.**

(1) A provider shall:

(a) be responsible for the oversight of all installers employed by the business;

(b) maintaining all records of the business, including client records and personnel files for all installers employed by the business;

(c) insure the security of all client records and personal data on any forms, receipts or contracts used by the business;

(d) allow the division to conduct inspections and audits of the business and its records;

(e) furnish any records of the business to the division upon request;

(f) train any installers who will be working at the business on how to properly install an ignition interlock system and provide the installers with a certificate of completion;

(g) complete and require all installers who will be working at the business to complete any training administered by the division;

(h) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or crime of moral turpitude;

(i) not knowingly employ an installer who has been convicted of or who has been found by the division to have engaged in conduct which constitutes a felony or crime of moral turpitude;

(j) post signs on the business to identify the business by the name listed on the provider's license application;

(k) conspicuously display at the business a copy of the provider's license and business license;

(l) not be employed by more than one business at a time;

(m) insure that the business does not operate from the same facility or location as another business;

(n) notify the division when the provider is no longer working at a business;

(o) surrender the provider's license to the division within five days if the provider is no longer working at the business or the provider's license is denied, cancelled or revoked;

(p) obtain and maintain a \$50,000 surety bond for the business that shall:

(i) protect against liability to third persons;

(ii) be continuous in form and run concurrently with the license period; and

(iii) provide for notice to the division in the event of cancellation of the surety bond.

(q) ensure that a business, located in a municipality having a population of 50,000 or more, is not located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public, unless the business was established in that location prior to the establishment of the facility in which vehicle registrations or driver licenses are issued to the public;

(r) not solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public;

(s) seek approval from the division before moving the business;

(t) insure that the business' facilities and buildings comply with federal, state, and local building, fire, safety and health codes;

(u) not use any logos, letterhead, documents, driver license or vehicle plate license recreations of the department, the division or the Utah State Tax Commission, Division of Motor Vehicles, in their advertising, however a business may display on its premises a sign reading, "This Ignition Interlock System Provider is licensed by the State of Utah."

(v) notify the division in writing of any changes to residential or mailing address of anyone who works at the business; and

(w) notify the division in writing if any employee is no longer employed by the business.

**R708-48-5. Procedure to Obtain and Renew a Provider License.**

(1) To apply for or renew a provider license, an applicant shall submit a completed provider application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

(a) a completed provider application form provided by the division, which has been signed and notarized by the applicant and all other required parties;

(b) an application or renewal fee, along with any branch office fees, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check;

(d) samples of all forms, receipts, and contracts used in the course of operation of the business;

(e) a schedule of fees to be charged by the business for each service performed by the business;

(f) a description of how the business shall be operated, which shall include:

(i) a description of how the provider will meet the requirements of Title 53, Chapter 3, Part 10 and R708-48;

(ii) a detailed installer training plan; and

(iii) copies of all training materials that will be used;

(g) evidence of a \$50,000 surety bond for the business that

shall:

- (i) protect against liability to third persons;
  - (ii) be continuous in form and run concurrently with the license period; and
  - (iii) provide for notice to the division in the event of cancellation of the surety bond.
- (h) a copy of the business license for the business as required by the municipality or county in which the business is located; and
- (i) evidence of two years prior experience in operating a business.

(3) When seeking to renew a provider license, the provider shall:

- (a) submit all of the items listed in R708-48-5(2)(a) through (c);
- (b) submit an updated copy of the items listed in R708-48-5(2)(d) through (f) if the business has made any changes to these items since the provider applied for or renewed the provider license; and
- (c) not be required to submit the items listed in R708-48-5(2)(g) through (i).

(4) Upon receipt of a completed provider application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(5) If the division determines that the application packet contains all of the necessary information, the division shall conduct a site inspection of the business before a license may be granted.

(6)(a) If the business passes the division's inspection and meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted a provider license.

(b) A provider license is not transferable.

(c) If a provider license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

- (i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and
- (ii) a duplicate license fee.

(7) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

#### **R708-48-6. Requirements for an Installer.**

(1) A licensed installer shall:

- (a) possess a valid installer license when working as an installer;
- (b) only be allowed to work under the supervision of the specific provider listed on the installer's license application;
- (c) complete training for ignition interlock systems offered by the provider of the business for which they will be employed;
- (d) complete any training administered by the division; and
- (e) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or a crime of moral turpitude;

#### **R708-48-7. Procedure to Obtain and Renew an Installer License.**

(1) To apply for or renew an installer license, an applicant shall submit a completed installer application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

- (a) a completed installer application form provided by the division, which has been signed and notarized by the applicant

and all other required parties;

(b) an application or renewal fee, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check; and

(d) a signed agreement verifying that the applicant has read and understands all of the laws and rules that are applicable to the ignition interlock system program.

(3) Upon receipt of a completed installer application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(4)(a) If the applicant meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted an installer license.

(b) Installer licenses are not transferable.

(c) If an installer license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

(i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and

(ii) the duplicate license fee.

(5) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

#### **R708-48-8. Business Inspection and Audit Procedures.**

(1) The division shall conduct inspections and audits of a business and its records to verify compliance with Title 53, Chapter 3, Part 10 and R708-48.

(2)(a) The premises and records of the business shall be available to the division immediately upon request for the purpose of an inspection or audit.

(b) If it becomes necessary to remove records from the business for audit purposes, the division shall provide a receipt to the business which will include:

- (i) the name and location of the provider;
- (ii) the location of the business;
- (iii) the date that records are removed;
- (iv) a description of what records are removed;
- (v) the signature of an authorized representative of the business; and
- (vi) the signature of a division representative.

(c) Upon return of the records, the receipt shall be updated with:

- (i) the date the records were returned;
- (ii) the signature of an authorized representative of the business who is receiving the records; and
- (iii) the signature of the division representative returning the records.

(d) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience to the business.

(3)(a) A division representative shall prepare a written report of all inspections and audits.

(b) A copy of these reports shall be maintained by the division for ten years.

(c) Following a business inspection or audit, the division shall notify the business of the division's findings by sending a:

- (i) letter to the business indicating any problems, concerns or violations found during the inspection or audit along with an

action plan detailing expectations regarding correction of the items identified; or

(ii) notice of agency action.

**R708-48-9. Contracts.**

(1)(a) A written contract approved by the division shall be executed by both the client and an authorized representative of the business before the business may render any services to a client.

(b) If a client is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any service.

(c) A copy of the contract shall be given to the client and the original retained by the business.

(d) The contract shall contain:

(i) the client's:

(A) full legal name;

(B) date of birth;

(C) driver license number;

(D) license plate number;

(E) full residential address; and

(F) full mailing address;

(ii) a description of the services to be provided by the business;

(iii) a break-down of the costs associated with all services provided; and

(iv) any requests made by the client.

(2) The client shall be given a receipt upon payment of any fees.

**R708-48-10. Records.**

(1) All of the business' records shall be kept accurately and completely.

(2) The business shall maintain the following client records for a period of four years after the contractual obligation with the client has concluded:

(a) documentation of any service provided to a client which include:

(i) the client's:

(A) name;

(B) date of birth;

(C) driver license number;

(ii) license plate number;

(iii) type of service provided;

(iv) exact date the service was performed;

(v) name of the installer and installer ID number; and

(vi) ignition interlock device serial number and name of manufacturer;

(b) original copies of client contracts;

(c) original copies of receipts; and

(3) The business' administrative records shall be maintained for the life of the business, including:

(a) business plans;

(b) licenses;

(c) training records;

(d) personnel records; and

(e) surety bond information.

(4) Records of the business shall be updated within 24 hours of service.

(5) All ignition interlock system installations and removals must be reported electronically to the division in a manner specified by the division within 24 hours, and shall include the following:

(a) the client's:

(i) name;

(ii) date of birth

(iii) driver license number;

(b) license plate number;

(c) ignition interlock device serial number and name of manufacturer; and

(d) date of installation or removal.

(6) Each provider shall review the records of the business at least annually for completeness and accuracy.

(7) If any records that the business is required to maintain are lost or destroyed, the provider shall be immediately file an affidavit with the division which states:

(a) the date the record was lost or destroyed; and

(b) the circumstances surrounding the loss or destruction.

**R708-48-11. Grounds for the Denial, Cancellation or Revocation of a Provider or Installer License.**

(1) A provider or installer may be denied, cancelled or revoked for any of the following:

(a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 10, 41-6a-518, or R708-48; or

(b) falsification of any records or other required information relating to the Ignition Interlock System program.

(2)(a) In determining whether denial, cancellation or revocation is appropriate, the division shall consider the provider's or installer's involvement and the severity of the violation.

(b) In lieu of cancelling or revoking a license, the division may elect to place the provider or installer on probation if warranted by the nature of the violation.

**R708-48-12. Adjudicative Proceedings.**

(1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against an provider or installer with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) An ignition interlock system provider or ignition interlock system installer who receives a notice of agency action indicating that the division intends to deny, cancel or revoke a license may request a hearing by filing a written request for hearing with the division within 10 calendar days from the date the notice of agency action is issued.

(b) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(c) A hearing shall be held before the division's hearing officer within 30 calendar days from the day that the division receives the written request for hearing, unless agreed to by the parties.

(d) At the hearing, the provider or installer shall have an opportunity to demonstrate why the division should not take agency action.

(e) The hearing officer shall issue a written decision within 10 business days after the hearing in accordance with Section 63G-4-203.

(f) The written decision of the hearing officer shall constitute final agency action and is subject to judicial review in accordance with Section 63G-4-402.

**KEY: Ignition Interlock System Program**

**November 19, 2012**

**Title 53, Chapter 3, Part 10**

**R710. Public Safety, Fire Marshal.****R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204; Title 15A, Chapter 1, Section 403; and, Title 15A, Chapter 5, Section 208, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, procedures for the issuance of blasting permits, and amendments and additions.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 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, except as amended by provisions listed in R710-9-11, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

**R710-9-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

2.9 "Restricted Account" means Firefighter Support Restricted Account.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.12 "UCA" means Utah Code Annotated, 1953.

**R710-9-3. Conduct of Board Members and Board Meetings.**

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a

conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governor's office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency

shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Fire Advisory and Code Analysis Committee.**

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

**R710-9-7. Enforcement of the Rules of the State Fire Marshal.**

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2

of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

**R710-9-8. Fire Prevention Board Budget and Amendment Subcommittees.**

8.1 There is created two Fire Prevention Board subcommittees known as the Budget Subcommittee, and the Amendment Subcommittee. Each subcommittee's membership shall be appointed from members of the Board.

8.2 Subcommittee membership shall be by appointment of the Board Chair or as volunteered by Board members. Subcommittee membership shall be limited to four Board members.

8.3 Each subcommittee shall meet as necessary and shall vote and appoint a chair to represent the subcommittee at regularly scheduled Board meetings.

**R710-9-9. Firefighter Support Restricted Account.**

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair. The chair shall serve for a term of one year, and shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

**R710-9-10. Regulation of Novelty Lighters.**

10.1 All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy



and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

**R710-9-11. Amendments and Additions.**

There are currently no amendments and additions adopted by the Board for application statewide.

**R710-9-12. Issuing of Blasting Permits.**

12.1 When a local fire department or AHJ does not have a procedure in place for the issuance of a blasting permit, or when blasting occurs as part of an on-going/continuous project across more than one fire service jurisdiction, the requesting applicant must provide all of the following to the SFM:

- 12.1.1 Completion of an approved blasting permit application
- 12.1.2 A copy of a current Alcohol, Tobacco, and Firearms (ATF) License/Permit
- 12.1.3 A copy of a current ATF listed Responsible Parties and Employee Possessors Permit
- 12.1.4 Twenty-Four (24) hour emergency contact information; including name, address, phone numbers, and email for responsible parties, local/site project supervisor or foreman, and primary contact(s) information for the requested permit.
- 12.1.5 Purpose of the permit requested
- 12.1.6 Location of proposed blasting including the physical address and/or map of the area
- 12.1.7 Information on explosive types, quantities in storage, shot quantities and day use estimates.
- 12.1.8 Proof of insurance.
- 12.2 Upon approval, the applicant shall present the permit to all affected jurisdictions.
- 12.3 Appeals of permit denials shall follow the procedures outlined in R710-9-15.

**R710-9-13. 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.

**R710-9-14. Validity.**

The Utah Fire Prevention 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 Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-9-15. Adjudicative Proceedings.**

- 15.1 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.
- 15.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.
- 15.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.
- 15.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.
- 15.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.
- 15.6 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.

15.7 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.

15.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, law**

**November 21, 2012**

**Notice of Continuation June 7, 2012**

**53-7-204**

**15A-1-403**

**15A-5-208**

**R746. Public Service Commission, Administration.**

**R746-100. Practice and Procedures Governing Formal Hearings.**

**R746-100-1. General Provisions and Authorization.**

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints may be converted to informal proceedings, pursuant to Section 63G-4-202.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

**R746-100-2. Definitions.**

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.

C. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

D. "Consumer complaint" is a complaint of a retail customer against a public utility.

E. "Division" is the Division of Public Utilities, State of Utah Department of Commerce.

F. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

G. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63G-4-202.

H. "Informal proceeding" is a proceeding so designated by the Commission.

I. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).

J. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

K. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

L. "Office" is the Office of Consumer Services, State of Utah Department of Commerce.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an

adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

**R746-100-3. Pleadings.**

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

- a. motions, oppositions, and similar filings in existing Commission proceedings;
- b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

Name of Attorney preparing or Signer of Pleading  
Address  
Telephone Number

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

-----  
In the Matter of the )  
Application, petition, ) Docket Number  
etc.-- for complaints, )  
names of both complainant ) Type of pleading  
and respondent should )  
appear )  
-----

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and in a font of at least 12 points. Pleadings shall be presented for filing on paper

8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document that is substantially the same as the paper version filed, and may be transmitted electronically to the e-mail address the Commission designates for such purposes or presented in electronic media (i.e., compact disc (CD)), using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched. A filing is not complete until the original and all required copies -- both paper and electronic -- are provided to the Commission in the form described. If an electronic document is filed in Portable Document Format (PDF) and PDF is not the format of the filing party's source document:

1. the electronic document shall also be provided in its original format; and
2. the PDF document shall include footnote references describing the name and location of the source document in the filed electronic media.

D. Certificate of Service -- a Certificate of Service must be attached to all pleadings filed with the Commission, certifying that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified. A filing is not complete without this certificate of service.

E. Pleadings Containing Confidential and Highly Confidential Information --

1. Pleadings, including all accompanying documents, containing information claimed to be confidential or highly confidential, as described in R746-100-16, shall be filed in accordance with R746-100-3(C) and shall conform to the following additional requirements:

a. The paper version of a pleading containing confidential information shall be filed on yellow paper with the confidential portion of the pleading denoted by shading, highlighting, or other readily identifiable means. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A)(1)(b).

b. The paper version of a pleading containing highly confidential information shall be filed on pink paper with the highly confidential portions of the pleadings denoted by shading, highlighting, or other readily identifiable means. Both the paper and electronic versions presented for filing shall be designated highly confidential in accordance with R746-100-16(A)(1)(g).

c. A non-confidential version shall also be filed, in both paper and electronic form, from which all confidential and highly confidential information must be redacted. All copies of this version shall be clearly labeled as "Non-Confidential - Redacted Version."

F. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

G. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

H. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division

for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

I. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year;

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

J. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the secretary of the Commission and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

K. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

#### **R746-100-4. Filing and Service.**

A. Filing of Pleadings -- Pleadings shall be filed with the Commission in the format described in R746-100-3(C), and the number of original and paper copies shall be as specified at <http://www.psc.utah.gov/filingrequirements.html>.

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state holiday.

#### **R746-100-5. Participation.**

Parties to a proceeding before the Commission, as defined in Section 63G-4-103, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Office shall be given full participation rights in any case.

#### **R746-100-6. Appearances and Representation.**

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

#### **R746-100-7. Intervention and Protest.**

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63G-4-207.

#### **R746-100-8. Discovery.**

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational

queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(a)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

#### **R746-100-9. Prehearing Conference and Prehearing Briefs.**

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedures to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by

the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;
2. delineate scope of cross-examination and set limits thereon if necessary;
3. identify and prenumber exhibits.

#### **R746-100-10. Hearing Procedure.**

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63G-4-201(2)(b) and 63G-4-201(3)(e) at least five days before the date of the hearing or shorter period as determined by the Commission.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63G-4-209.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary, trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

b. if a person engages in disrespectful, disorderly, or

contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public witnesses may elect to provide unsworn statements.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked. Parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63G-4-206(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been

reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written text numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

- a. be updated throughout the hearing;
- b. depict the final positions of each party on each issue at the end of the hearing; and
- c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

1. Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.

2. If a party requests that a scheduling conference or technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

#### **R746-100-11. Decisions and Orders.**

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have

a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. A short synopsis of the order, placed at the beginning of the order, shall describe the final resolutions made in the order.

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 30 days of the issuance date of the order in accordance with Section 63G-4-301 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 15 days. Proceedings on review shall be in accordance with Section 54-7-15. A petition for reconsideration pursuant to Section 63G-4-302 is not required in order for a party to exhaust its administrative remedies prior to appeal.

#### **R746-100-12. Appeals.**

Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.

#### **R746-100-13. Ex Parte Communications.**

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the

Commission;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

F. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

#### **R746-100-14. Rulemaking.**

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any

appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63G-3-301.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

#### **R746-100-15. Deviation from Rules.**

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship which outweighs the benefits of the rule.

#### **R746-100-16. Use of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.**

A. Information, documents and material submitted or requested in or relating to any Commission proceeding which is claimed to be confidential will be treated as follows:

1.a. Nature of Confidential Information. A person (Providing Party) required or requested to provide documents, data, information, studies, and other materials of a sensitive, proprietary or confidential nature (Confidential Information) to the Commission or to any party in connection with a Commission proceeding may request protection of such information in accordance with the terms of this rule. Confidential treatment shall be requested only to the extent a good faith reasonable basis exists for claiming that specific information constitutes a trade secret or is otherwise of such a highly-sensitive or proprietary nature that public disclosure would be inappropriate. Confidential treatment shall be requested narrowly as to only that specific information for which protection is reasonably required.

b. Identification of Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, whether made available pursuant to interrogatories, requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Confidential Information, shall be furnished pursuant to the terms of this rule or any superseding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superseding Protective Order. All material claimed to be Confidential Information shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows:

"CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked shall be made on yellow paper.

c. Line Numbering in Redacted Documents. Parties shall ensure that line numbering in any redacted version of a document shall conform to and retain the general formatting and line numbering used in the unredacted version of the document. Individuals providing electronic documents to the Commission should file both a confidential and non-confidential version each clearly marked as such. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this rule.

d. Use of Confidential Information and Persons Entitled to Review. The Commission, Division of Public Utilities, and Office of Consumer Services shall be provided with Confidential Information and may use the Confidential Information as these agencies deem necessary to perform their statutory functions, provided they shall protect the confidentiality of the information as required by Utah law. Other than these state agencies, all Confidential Information made available pursuant to this rule shall be given solely to counsel for the participants (which may include counsels' paralegals, administrative assistants and clerical staff to the extent reasonably necessary for performance of work on the matter), and shall not be used nor disclosed except for the purpose of the proceeding in which they are provided and in accordance with this rule; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information. The Commission, the Division of Public Utilities, and the Office of Consumer Services, and their respective counsel and staff, pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this rule or Protective Order and shall be bound by the terms of this rule, except as otherwise stated herein and except for the requirement of signing a nondisclosure agreement. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the person being required to disclose Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by electronic mail facsimile and overnight mail to the person that provided such Confidential Information, addressed to the providing person and attorneys of record for such person, so that the person that provided the Confidential Information may seek appropriate restrictions on disclosure or an appropriate protective order. The disclosing person will not oppose action by, and will cooperate with the person that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

e. Nondisclosure Agreement. Prior to giving or obtaining access to Confidential Information, as contemplated in (1)(b)

above, counsel or any experts shall agree in writing to comply with and be bound by this rule and any Protective Order. Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is provided below or referenced in the Protective Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this rule and any applicable Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by the terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the person with whom the signatory is associated. Such agreement shall be delivered to the providing person and counsel for the providing person prior to the expert gaining access to the Confidential Information.

The Nondisclosure Agreement may be in the following form:

"Nondisclosure Agreement. I have reviewed Public Service Commission of Utah Rule 746-100-16 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order." Thereafter there shall be lines upon which shall be placed the individual's signature, the typed or printed name of the individual, identification or name of the individual's employer or firm employing the individual (if any), the business address for the individual, identification or name of the party in the proceeding with which the individual is associated, and the date the nondisclosure agreement is executed by the individual.

f. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule for Confidential Information, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Confidential Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requesting Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Confidential Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

g. Identification of Highly Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, whether made available pursuant to interrogatories, requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Highly Confidential, shall be furnished pursuant to the terms of this rule or any superceding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superceding Protective Order. All material claimed to be Highly Confidential shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "HIGHLY CONFIDENTIAL--SUBJECT OF UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16," "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or



"HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked shall be made on pink paper.

2.a. Challenge to Confidentiality or Proposed Additional Protective Measures. This rule establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

b. In the event that persons are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information or Highly Confidential Information referred to in (A)(1)(e) above, or in the event that persons are unable to agree on the appropriate treatment of Highly Confidential Information, the person objecting to the classification as Confidential Information or the person claiming Highly Confidential Information and the need for additional protective measures shall forthwith submit the disputes to the Commission for resolution.

c. Any person at any time upon at least ten (10) days prior notice, when practicable, may seek by appropriate pleading, to have documents that have been designated as Confidential Information or Highly Confidential Information, or which were accepted into the sealed record in accordance with this rule or a Protective Order, removed from the protective requirements of this rule or the Protective Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked substantially as follows "CONFIDENTIAL--SUBJECT TO RULE 746-100-16" "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)" unless the Commission determines, and so provides by order, that such marking need not occur. It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless and until released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this rule or Protective Order, or from the protection of the sealed record, such order of the Commission shall not be effective for a period of ten (10) days after entry of the order.

3.a. Receipt into Evidence. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, if practicable, the person intending to use such Confidential Information shall make that intention known to the providing person. The requesting person and the providing person shall make a good faith effort to reach an agreement so that the Confidential Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing person shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing person to be placed in a sealed record shall be made and only for that purpose. Otherwise, persons shall make only general references to Confidential Information in any proceedings.

b. Seal. While in the custody of the Commission, Confidential Information provided pursuant to this rule or a Protective Order shall be marked substantially as follows: "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-100-16," "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)."

c. In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in a sealed record of a proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this rule or Protective Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be similarly marked and treated.

d. Appeal. Sealed portions of the record in any proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

e. Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this rule or Protective Order, and shall be returned to the providing person or counsel for the providing person within 30 days after final order, settlement, or other conclusion of the matters in which they were used, including administrative or judicial review thereof. Alternatively, a person receiving Confidential Information pursuant to the terms of this rule or Protective Order may certify, within 30 days after final order, settlement, or other conclusion of the matter including administrative or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this rule or Protective Order may retain the Confidential Information, their notes, work papers or other documents as their attorneys' work product created with respect to their use and access to Confidential Information in the matter. An expert witness, accorded access to Confidential Information pursuant to this rule or Protective Order, shall provide to counsel for the person on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing responsibility, this provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order. Any party that intends to use or disclose Confidential Information obtained pursuant to this rule or a Protective Order in any subsequent Commission dockets or proceedings, shall do so in accordance with the terms of this rule or any applicable protective orders issued in such other subsequent Commission dockets or proceedings and only after providing notice of such intent to the providing person along with an identification of the original source of the Confidential Information.

4. Use in Proceedings. Where reference to Confidential Information is required in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, brief, or document and submitted under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement and counsel

for the Division of Public Utilities and Office of Consumer Services. All the protections afforded in this rule apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general, or conclusionary form, it shall be placed in a separate section of an Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless such Confidential Information is released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this rule or Protective Order shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this rule or a Protective Order.

8. Reservation of Rights. Persons affected by the terms of this rule or a Protective Order retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this rule or a Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This rule or a Protective Order shall in no way constitute any waiver of the rights of any person to contest any assertion by another person or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

**KEY: government hearings, public utilities, rules and procedures, confidential information**

**July 9, 2012**

**Notice of Continuation November 28, 2012**

54-1-1

54-1-3

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63G-4

**R746. Public Service Commission, Administration.****R746-101. Statement of Rule for the Filing and Disposition of Petitions for Declaratory Rulings.****R746-101-1. Definitions.**

A. Terms used in this rule are defined in Section 63-46a-2, except that "agency" shall mean the Utah Public Service Commission.

B. In addition:

1. "Order" shall mean a Commission action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons and not a class of persons;

2. "Declaratory Ruling" shall mean an administrative interpretation or explanation of rights, status, interests or other legal relationships under a statute, rule or order; and

3. "Applicability" shall mean a determination of the relationship of a statute, rule or order to a given set of facts.

**R746-101-2. Petition Procedure.**

A. A person or agency may petition the Commission for a declaratory ruling.

B. The petition shall be addressed to the Commission and directed to the chairman of the Commission.

C. The Commission will stamp upon the petition the date of its receipt.

D. The petitioner shall serve a copy of the petition upon the public utility which could or would be adversely affected by a Commission ruling favorable to the petitioner and shall file with the Commission the certificate of service within five days of the filing of the petition; or petitioner shall include in the petition a statement to the effect that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to the petitioner.

**R746-101-3. Petition Form.**

A. The petition shall:

1. be clearly designated a request for a declaratory ruling;

2. identify the statute, rule or order to be reviewed;

3. describe adequately the facts and circumstances in which applicability is to be reviewed;

4. describe the reason or need for the review;

5. include an address and telephone number where petitioner can be reached; and

6. be signed by the petitioner or petitioner's duly authorized representative and be notarized.

**R746-101-4. Petition Review and Disposition.**

A. The Commission shall:

1. review and consider the petition;

2. prepare a declaratory ruling in compliance with the requirements of 63G-4-503(6) and stating:

a. the applicability or non-applicability of the statute, rule or order in question;

b. the reasons for the applicability or non-applicability of the statute, rule or order in question;

c. requirements imposed upon the Commission, petitioner, or a person as a result of the ruling.

B. The Commission may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take action which the Commission, in its discretion and judgment, deems necessary to provide the petitioner with adequate review and due consideration of the petition.

C. The Commission shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner and each party a copy of the ruling.

D. The Commission shall retain the petition and a copy of the declaratory ruling in its records.

**KEY: public utilities, rules and procedures, government hearings**

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63G-3-102

Notice of Continuation November 28, 2012 63G-4-503(6)

**R746. Public Service Commission, Administration.****R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.****R746-200-1. General Provisions.**

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

## C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

## F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

**R746-200-2. General Definitions.**

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

**R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.**

## A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

## B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

## C. Shared Meter or Appliance - In rental property where

one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

#### **R746-200-4. Account Billing.**

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

##### **B. Estimated Billing --**

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";
2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";
3. the amount of payments made to the account during the current billing cycle using a term such as "payments";
4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";
5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";
6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";
7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;
8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

##### **D. Late Charge --**

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

##### **F. Disputed Bill --**

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

#### **R746-200-5. Deferred Payment Agreement.**

##### **A. Deferred Payment Agreement --**

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current

month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

**3. Payment Options**

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

i. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or

ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

**R746-200-6. Reconnection of Discontinued Service.**

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

**R746-200-7. Termination of Service.**

**A. Delinquent Account --**

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other

action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

**B. Reasons for Termination of Service --**

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information;

or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

**C. Restrictions upon Termination of Service During Serious Illness --**

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-7(C)(2).

2. Upon receipt of a statement, signed by an osteopathic physician, a physician, a surgeon, a naturopathic physician, a physician assistant, a nurse, or a certified nurse midwife, as the providers are defined and licensed under Title 58 of the Utah Code, either on a form obtained from the utility or on the health care provider's letterhead stationery, which statement legibly identifies the health infirmity or potential health hazard, and how termination of service will injure the person's health or aggravate their illness, a public utility will continue or restore residential utility service for the period set forth in the statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment whose normal operation requires continuation of the utility's service, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility, which notice form is to be obtained from the utility, signed and supported by a statement consistent with that required in part C.2. above, and specifically identifying the life-support equipment that requires the utility's service. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

- a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;
- b. the Commission-approved policy on termination of service for that utility;
- c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;
- d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;
- e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;
- f. the date on which payment arrangements must be made to avoid termination of service; and
- g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final

notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including

notification to third parties upon the request of the account holder, Subsection R746-200-7(C), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

#### **R746-200-8. Informal Review.**

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their

past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

#### **R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.**

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

#### **R746-200-10. Penalties.**

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

**KEY: public utilities, rules, utility service shutoff  
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54-7-25



**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 leveled 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.

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**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 leveled 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 November 28, 2012**

**54-4-1**

**54-4-7**

**54-4-18**

**54-4-23**



**R909. Transportation, Motor Carrier.****R909-2. Utah Size and Weight Rule.****R909-2-1. Purpose and Applicability.**

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and over weight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

**R909-2-2. Authority.**

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

**R909-2-3. Definitions.**

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(4) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(5) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(6) "Commercial vehicle" as defined in CFR 390.5 and Section 72-9-102.

(7) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(8) "Department" means the Utah Department of Transportation.

(9) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(10) "Division" means the Motor Carrier Division.

(11) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(12) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(13) "Fixed axle" means an axle that is not steerable, self steering or retractable.

(14) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(15) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(16) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(17) "Highway" any public road, street, alley, lane, court,

place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(18) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(19) "Incidental" means transportation that occurs occasionally or by chance, but does not exceed a distance of 20 miles.

(20) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(21) "Laden" means carrying a load.

(22) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(23) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(24) "Manufactured home" a transportable factory built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(25) "Manufactured mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(26) "Motor carrier" as defined in Section 72-9-102.

(27) "MVR" means motor vehicle record.

(28) "MUTCD" means Manual on Uniform Traffic Control Devices.

(29) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(30) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(31) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(32) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(33) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(34) "Quad axle group" means a group of four consecutive fixed axles.

(35) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(36) "Retractable axle" is an axle which can be

mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(37) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(38) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(39) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(40) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(41) "Special event" means the movement of an over-dimensional load or vehicle.

(42) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(43) "Special truck equipment" or an STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(44) "Spread axle" is two single axles that exceed 96 inches apart.

(45) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(46) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(47) "Triple trailer" means a tractor and three trailers of approximately equal length.

(48) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(49) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(50) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(51) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(52) "Turnpike doubles" means a tractor and two trailers of equal length.

(53) "UCR" means Unified Carrier registration.

(54) "Un-laden" means a vehicle is not carrying a load.

(55) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(56) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

**R909-2-4. Legal Size Vehicle Dimensions.**

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

- (a) height: 14 feet
- (b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor Vehicle	45 feet	Measured from bumper to bumper.
Trailer	48 feet	A trailer may not exceed 48 feet.
Semi-trailer	53 feet	There is no overall length limitation on a tractor and semi-trailer combination when the semi-trailer length is 53 feet or less.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered	75 feet	Stinger-steered combinations are measured from bumper to bumper. Transporters may have 3 feet of front and 4 feet of rear overhang, but may not exceed 82 feet overall length.
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet rear	Overhang may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.

**R909-2-5. Legal Weight Limitations.**

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated in excess of:

TABLE 2

## Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	Must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

**R909-2-6. Tire Load Provision for Single Tires.**

(1) The use of narrow single tires, that are less than 14 inches wide, on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles, except for steering axles, including self steering VLS, or retractable axles, or wide base tires, that are 14 inches or greater.

(2) All axles having a weight in excess of 10,000 pounds shall be equipped with four tires per axles, or wide base single tires.

(3) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring an oversize or overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(d) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

(4) Except for steering axles, self steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 10,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 30,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 20,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(5) Dual or super single tires, that are 14 inches or greater, are required on all trailer axles.

**R909-2-7. Variable Load Axles.**

(1) Vehicles with variable load axles are limited as follows:

(a) no more than three fixed axles shall be allowed in any group;

(b) retractable or variable load suspension axles installed after January 1990 shall be self steering on power units or when augmenting a tridem group on trailers;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(c) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

**R909-2-8. General Oversize or Overweight Provisions.**

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the

appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee, agrees to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

**R909-2-9. Transfer or Replacement of Permits.**

(1) Division personnel may transfer permits from one vehicle to another for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle; or

(c) lease changes from one company to another by providing evidence of permit ownership.

(2) A transfer permit will be issued with the same expiration date as the original permit.

**R909-2-10. Permit Revocation, Suspension and Confiscation.**

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding in excess of the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all of the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

**R909-2-11. Weather Travel Restrictions.**

(1) No carrier shall operate a permitted vehicle or vehicles in excess of 81 feet cargo or cargo carrying length, when the

following conditions exist:

- (a) wind in excess of 45 m.p.h.;
- (b) any accumulation of snow and ice on the roadway; or
- (c) visibility less than 1,000 feet.

**R909-2-12. Curfew Congestion Restrictions.**

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles in excess of 10 feet wide, 105 feet overall length, and 14 feet in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

- (a) all highways south of Perry Willard Interchange, I-15, Exit #357;
- (b) all highways in Weber, Davis, and Salt Lake Counties;
- (c) all highways in Utah County north of I-15, Exit #261;
- (d) SR 68, North of mile post 16 in Utah County;
- (e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and
- (f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

**R909-2-13. Holiday Travel Restrictions.**

(1) Travel is prohibited for loads in excess of 10 feet wide, 105 feet overall length, and 14 feet in height during the following holidays:

- (a) Christmas Day;
- (b) New Year's Day;
- (c) Memorial Day;
- (d) Independence Day;
- (e) Labor Day; and
- (f) Thanksgiving Day.

(2) Monday holiday observance:

(a) when a holiday is observed on a Monday, travel is prohibited from 2 p.m. on Friday until daylight on the Tuesday following the recognized holiday.

(3) Tuesday, Wednesday and Thursday holiday observance:

(a) when the holiday is observed on a Tuesday, Wednesday, or Thursday, travel is prohibited from 2 p.m. on the day before the holiday until daylight the day after the holiday.

(4) Friday holiday observance:

(a) when the holiday is observed on a Friday, travel is prohibited from 2 p.m. on Thursday until daylight on Monday following the recognized holiday.

(5) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(6) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during hunting seasons, other holidays, weather conditions, or special events.

**R909-2-14. Night Time Restrictions.**

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

- (a) 14 feet high;
- (b) 10 feet wide;
- (c) 105 feet in length; or
- (d) overhang in excess of 10 feet.

**R909-2-15. Night Time Travel Provisions.**

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all

secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

**R909-2-16. Oversize Divisible Load Provisions.**

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet;

(b) the width of the combination or load does not exceed 8 feet 6 inches.

(c) in combinations, a longer trailer shall precede the shorter trailer;

(d) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(e) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light on both the right and left side of the drawbar located near the center of the drawbar.

**R909-2-17. Oversize Non-Divisible Load Provisions.**

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

- (i) 14 feet in height,
- (ii) 14 feet 6 inches in width, and
- (iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads in excess of this section.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 120 feet in length.

(a) Loads exceeding 10 feet wide and 120 feet long shall purchase a single trip permit.

**R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.**

(1) One pilot vehicle is required for vehicles or loads, which exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways; and

(c) overhangs in excess of 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

**R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.**

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads in excess of 175 feet in length must have a minimum of one police escort;

(d) All loads in excess of 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

**R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.**

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang in excess of three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are clearly legible at all times;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened so as to wave freely; and

(d) over dimensional flagging is not required on LCVs.

**R909-2-21. Convoys.**

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

**R909-2-22. Trailers in excess of 48 to 57 Feet in Length.**

(1) Semi-trailers exceeding 48 feet, and up to 53 feet in length are not required to purchase oversize permits when operating on or within one mile of state designated routes and US highways.

(2) Vehicles operating more than one mile from state designated routes and US highways will require an oversize permit available on a single trip, semi annual or annual basis.

(3) Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semi annual or annual permit.

(a) Trailers in excess of 53 feet must have LCV authority to purchase semi-annual and annual permits.

**R909-2-23. Longer Combination Vehicles.**

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination in excess of 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination in excess of 92 feet

not to exceed 95 feet in length, 14 feet in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) in combinations, a longer trailer shall precede the shorter trailer;

(b) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet, may not be transported on LCV's; and

(c) acceptable travel conditions exist in accordance with hazardous conditions for loads in excess of 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, and requires LCV authority exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

**R909-2-24. Overweight Divisible Load Provisions.**

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet high;

(c) All axles weighing more than 10,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 10,000 pounds per axle;

(d) the axle, groups of axles, and GVW do no exceed the bridge formula  $W = 500 \{LN/(N-1) + 12N+36\}$ ; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

**R909-2-25. Overweight Non-Divisible Load Provisions.**

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula  $\sim 1.47 \times 500 (LN/N-1 + 12N + 36)$ .

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semi annual trip, or annual trip basis as described in Table 3:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow-trucks may purchase a semi-annual, or annual non-divisible overweight permit as specified in Table 3.

(a) Tow-truck loads exceeding the maximum limits in Table 3 shall purchase a single trip permit.

**R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.**

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula  $\sim 1.47 \times 500 (LN/N-1 + 12N + 36)$  or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8 foot wide axle group.

(6) All tires shall be in compliance with the manufacturers tire load rating as indicated on the tire side wall.

(7) All STE operations must have an STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

**R909-2-27. Mobile and Manufactured Homes.**

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5 millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes in excess of 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit in excess of 12 feet wide.

**R909-2-28. Pilot Escort Requirements and Certification Program.**

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations in excess of 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges

for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(b) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(c) Trailers may not be towed at any time while in pilot escort operations.

(d) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(e) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an "OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8 inch high by 1 inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times; and

(d) the rear pilot escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent

illumination device approved by the division;

- (d) three orange 18 inch high cones;
- (e) a flashlight with a minimum 1 1/2 inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;
- (f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;
- (g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;
- (h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;
- (i) a fire extinguisher;
- (j) a first aid kit that is clearly marked;
- (k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;
- (l) one serviceable spare tire, tire jack and lug wrench;
- (m) a handheld two way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and
- (n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

- (a) all officers must have a CB radio to communicate with the pilot and transport vehicles;
- (b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;
- (c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;
- (d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and
- (e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than \$750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must be maintained at all times during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of \$750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

- (a) the person designated as being in charge such as a department representative or a law enforcement officer;
- (b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;
- (c) communication and signals coordination;
- (d) permitted dimensions will be verified with

measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

- (a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;
- (b) use "STOP" and "SLOW" paddles or a 24-inch red or fluorescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and
- (c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

#### **R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.**

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

- (a) name and address of entity;
- (b) list of instructors;
- (c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;
- (d) a copy of entity's business license;
- (e) sample of digital image certification card that will be issued to students upon completion of the course;
- (f) sample of "Flagger" certification card that will be issued to students upon completion of the course;
- (g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and
- (h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the division at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

- (a) division rules governing over-size load movements;
  - (b) pilot escort operations;
  - (c) flagging maneuvers for over dimensional loads;
  - (d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;
  - (e) pilot escort vehicle positioning and situational training;
  - (f) rail grade crossing safety;
  - (g) routing techniques, including pre-trip surveys; and
  - (h) insurance coverage requirements and liability issues.
- (3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:



- (a) 12 Fill in the blank;
- (b) 12 Multiple choice;
- (c) 12 true and false questions;
- (d) one to six questions dealing with safety equipment;
- (e) one to four questions dealing with the duties of pilot escort drivers;
- (f) one to six questions dealing with maintenance of equipment; and
- (g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

- (a) rates;
- (b) fees;
- (c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

- (a) student's name, address, and contact information;
- (b) driver's license number, original MVR and original proof of insurance information from insurance provider;
- (c) copy of each student's written exam;
- (d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to insure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, with the exception of the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. In the event that the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for the purpose of an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

### **R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.**

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not in excess of 25 miles per hours, shall at all times be equipped with a slow moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible

from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

**R909-2-31. Snow Plow Operations.**

(1) Blades in excess of 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.  
 (2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they are in compliance with:

- (a) lights which provide adequate illumination when the blade is in either the up, or down position;
- (b) signaling lights shall not be obscured; and
- (c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

**R909-2-32. Parade Floats.**

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

- (a) all floats must have sufficient proof of insurance;
- (b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;
- (c) the float driver must have a clear 360 degree visibility;
- (d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and
- (e) floats in excess of 14 feet in height, must be routed by the division.

**R909-2-33. Transportation of Utility Poles.**

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

- (a) oversize load restrictions;
- (b) pilot escort requirements;
- (c) travel restrictions; and
- (d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

- (a) Upon company request, the permit may be issued to the truck or truck tractor.
- (b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

**R909-2-34. Special Mobile Equipment.**

(1) Special mobile equipment or SME refers to vehicles:

- (a) not designed or used primarily for the transportation of persons or property;
  - (b) not designed to operate in traffic; and
  - (c) only incidentally operated or moved over the highways.
- (2) Special mobile equipment exempt from registration includes:

- (a) farm tractors; and
- (b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway use such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

- (a) the distance traveled shall not generally exceed 20 miles;
- (b) only daylight operations are authorized and all oversize restrictions apply;
- (c) weights must comply with the bridge formula for non-

divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

**R909-2-35. Special Truck Equipment.**

(1) The following vehicle configurations are considered special truck equipment:

- (a) concrete pumper trucks;
- (b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and
- (c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

**R909-2-36. Port-of-Entry By-Pass Permit Provisions.**

(1) A temporary by-pass permit may be issued to accommodate the multi-trip, highway transportation needs to motor carriers who meet the following criteria.

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle has to be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary in order to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or temporarily suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

**R909-2-37. Annual Review of Permit Regulations and Conditions.**

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review

permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

**KEY: trucks, safety regulations, permits  
November 26, 2012**

- 72-1-201
- 72-7-406
- 72-9-303
- 41-1a-102
- 41-1a-231
- 41-1a-1206
- 72-7-402
- 72-7-404
- 72-7-407
- 72-9-301
- 72-9-502

**R986. Workforce Services, Employment Development.****R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

**R986-200-202. Family Employment Program (FEP).**

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
  - (i) a licensed medical doctor;
  - (ii) a doctor of osteopathy;
  - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or  
 (v) a licensed Physician's Assistant.  
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

**R986-200-203. Citizenship and Alienage Requirements.**

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed.

If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

**R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

**R986-200-206. Participation Requirements.**

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other

benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

#### **R986-200-207. Participation in Child Support Enforcement.**

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

- (a) reaches age 18;
- (b) is 18 years old and enrolled in high school during the normal and expected year of graduation;
- (c) is emancipated by marriage or court order;
- (d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will

terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

#### **R986-200-208. Good Cause for Not Cooperating With ORS.**

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

- (i) birth certificates;
- (ii) medical records;
- (iii) Department records;
- (iv) records from another state or federal agency;
- (v) court records; or
- (vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is

likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

#### **R986-200-209. Participation in Obtaining an Assessment.**

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used

to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

#### **R986-200-210. Requirements of an Employment Plan.**

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or

limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

#### **R986-200-211. Education and Training As Part of an Employment Plan.**

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

#### **R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial



assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

#### **R986-200-213. Financial Assistance for a Minor Parent.**

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single

minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

#### **R986-200-214. Assistance for Specified Relatives.**

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(5) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(6) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(7) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for

each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(8) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(9) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

#### **R986-200-215. Family Employment Program Two Parent Household (FEPTP).**

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

#### **R986-200-216. Diversion.**

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
- (b) the likelihood that the applicant will obtain immediate

full-time employment;

- (c) the applicant's housing stability; and
- (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

#### **R986-200-217. Time Limits.**

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable

data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

#### **R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance

in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) Employment extension. An exception to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an extension under subsections (1) or (2) of this section, an additional extension can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an extension can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection,

establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

**R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.**

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

**R986-200-220. Mentors.**

(1) The Department will recruit and train volunteers to

serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
  - (i) the volunteer mentor;
  - (ii) the Department; or
  - (iii) civic organizations.

**R986-200-221. Drug Testing Requirements.**

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) or (3) of this section,

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

- (i) at the client's expense,
- (ii) at a testing facility approved by the Department,

(iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

**R986-200-230. Assets Counted in Determining Eligibility.**

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

**R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

**R986-200-232. Considerations in Evaluating Real Property.**

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

**R986-200-233. Considerations in Evaluating Household Assets.**

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

**R986-200-234. Income Counted in Determining Eligibility.**

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

- (a) children; and
- (b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

#### **R986-200-235. Unearned Income.**

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely

endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

#### **R986-200-236. Earned Income.**

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps\*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

#### **R986-200-237. Lump Sum Payments.**

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

#### **R986-200-238. How to Calculate Income.**

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a

history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

#### **R986-200-239. How to Determine the Amount of the Financial Assistance Payment.**

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

Household Size	Payment Amount
1	\$288
2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

**R986-200-240. Additional Payments Available Under Certain Circumstances.**

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

- (a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;
- (b) full-time attendance in an education or employment training program; or
- (c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is

completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

**R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.**

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

**R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.**

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

- (i) the parents or stepparents living in the home;
- (ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

**R986-200-243. Counting the Income of Sponsors of Eligible Aliens.**

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and



financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

- (a) paroled or admitted into the United States as a refugee or asylee;
- (b) granted political asylum;
- (c) admitted as a Cuban or Haitian entrant;
- (d) other conditional or paroled entrants;
- (e) not sponsored or who have sponsors that are organizations or institutions;
- (f) sponsored by persons who receive public assistance or SSI;
- (g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

- (a) the alien becomes a United States citizen through naturalization;
- (b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or
- (c) the alien or the sponsor dies.

#### **R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the

age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

#### **R986-200-245. TANF Non-FEP Training (TNT).**

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

#### **R986-200-246. Transitional Cash Assistance.**

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

**R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).**

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

**R986-200-250. Basic Education Training Provider.**

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

**R986-200-251. Types of Basic Education Training Providers and Approval Requirements.**

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;

(a) a birth certificate,

(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

(a) have been in business in Utah for at least one year;

(b) meet all state and local licensing requirements;

(c) have a satisfactory record with the Better Business Bureau;

(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:

(i) balance sheet, income statement and a statement of changes in financial position;

(ii) copy of the most recent annual business audit; or

(iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

(a) program completion rates for all individuals enrolled;

(b) the type of certification students completing the program will obtain;

(c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of

this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

**R986-200-252. Renewal and Revocation of Approval for Training Providers.**

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

**R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.**

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The

notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

**KEY: family employment program**

**November 9, 2012**

**35A-3-301 et seq.**

**Notice of Continuation September 8, 2010**

**R994. Workforce Services, Unemployment Insurance.****R994-406. Fraud, Fault and Nonfault Overpayments.****R994-406-101. Claimant Responsible for Providing Complete, Correct Information.**

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

**R994-406-201. Nonfault Overpayments.**

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

**R994-406-202. Method of Repayment of Nonfault Overpayments.**

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

**R994-406-203. Waiver of Recovery of Nonfault Overpayments.**

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) is currently eligible to receive unemployment benefits from the state of Utah and has filed a weekly claim against Utah within the last 27 days,

(b) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(c) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

**R994-406-301. Claimant Fault.**

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

**R994-406-302. Repayment and Collection of Fault Overpayments.**

(1) When the claimant has been determined to be "at fault"

in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments.

However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) All overpayments that are past due, legally enforceable, and attributable to fraud or the claimant's failure to report earnings shall be submitted to the Treasury Offset Program whereby the Secretary of the Treasury can offset Federal tax refund payments to be applied against the approved overpayment. Only overpayments where a valid warrant has been filed for failure to repay, that lack an installment agreement or are not current on approved installment agreement payments will be subject to the Treasury Offset Program.

(d) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

- (i) \$3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement
- (ii) \$3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement
- (iii) \$5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement
- (iv) \$10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in

amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-203(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

**R994-406-401. Claimant Fraud.**

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card (card) issued by the Department. Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately

even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

(4) A claimant is required, under R994-403-114c, to immediately notify the Department if the claimant is incarcerated. Upon notification, the Department will stop all unemployment benefits to the claimant until the claimant notifies the Department of his or her release from incarceration. If a claimant fails to notify the Department of his or her incarceration, any claims made during the incarceration period will be considered fraudulent.

#### **R994-406-402. Burden and Standard of Proof in Fraud Cases.**

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

#### **R994-406-403. Fraud Disqualification and Penalty.**

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud

determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of \$100 and reports no earnings during a week when he or she actually had \$50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive \$80 for that week and was thus overpaid the amount of \$20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the \$20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of \$120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be \$20 and the penalty would be \$20 for a total due of \$40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

#### **R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.**

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments and penalties.

#### **R994-406-405. Future Eligibility in Fraud Cases.**

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular

benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

**R994-406-406. Agency Error in Determining Disqualification Periods.**

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

**KEY: overpayments, unemployment compensation**

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