R13. Administrative Services, Administration.
R13-3. Americans with Disabilities Act Grievance Procedures.
R13-3-1. Authority and Purpose.

(1) This rule is made under authority of Section 63A-1-105.5 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Administrative Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall 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 the department because of a disability.

R13-3-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(2) "Department" means the Department of Administrative Services created by Section 63A-1-104.

(3) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

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

(6) "Executive Director" means the executive director of the department.

(7) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, 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) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R13-3-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

(a) include the complainant's name and address;

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

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

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his 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.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R13-3-4. Investigation of Complaints.

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R13-3-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R13-3-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the

complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R13-3-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R13-3-7. Record Classification.

(1) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R13-3-5 or a final decision upon appeal under Section R13-3-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R13-3-7(2), classified as "private."

R13-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
March 10, 2011 63A-1-105.5
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28 CFR 35.107

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.

(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) Any person accessing a roof must have fall protection equipment as required by any applicable authority.

(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
December 24, 2012 63A-5-103
Notice of Continuation November 14, 2012

R33. Administrative Services, Division of Purchasing and General Services.
R33-12. Rules of Procedure for Procurement Policy Board and Procurement Appeals Panel.
R33-12-1. Purpose.

The purpose of this Rule R33-12 is to establish procedures for the meetings of the Procurement Policy Board as well as the procedures for an appeal before the Procurement Appeals Panel.

R33-12-2. Authority.

This Rule R33-12 is authorized under Subsection 63G-6-201(3)(a)(i) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6-807 et. seq.

R33-12-3. Definitions.

All definitions in the Utah Procurement Code, Title 63G, Chapter 6, shall apply to this Rule R33-12. In addition the following definitions shall apply to this Rule R33-12:

(1) "Attendance" means a person attending a Board meeting, either in person or through electronic means as authorized by this Rule.

(2) "Board" means the Procurement Policy Board established under Section 63G-6-201.

(3) "Chair" means the person elected as Chair of the Board pursuant to Subsection 63G-6-201 (3)(a)(ii).

(4) "Chief Procurement Officer" means the Chief Procurement Officer as defined in the Utah Procurement Code.

(5) "Director" means the Director of the Division of Purchasing and General Services or a duly authorized designee.

(6) "Division" means the Division of Purchasing and General Services.

(7) "Electronic meeting" is as defined in Section 52-4-103.

(8) "Open and Public Meetings Laws" means those laws provided by Title 52, Chapter 4, Utah Code.

(9) "Parties of Record" means the person(s) that have appealed the protest decision to the Procurement Policy Board, the entity or entities that made the subject procurement, the entity or entities who are the intended beneficiaries of the procurement, as well as those that have approved to intervene in accordance with this Rule R33-12.

(10) "Presiding Officer" means the Chair. The Chair may choose, either because of unavailability or any other reason, an alternate Presiding Officer.

(11) "Protest Officer" means:

(a) as it relates to a purchasing agency, the head of the purchasing agency or a designee of the head of the purchasing agency;

(b) as it relates to a local public procurement unit, the purchasing officer or the governing body of the local public procurement unit, or a designee of either;

(c) as it relates to a public procurement unit other than a public procurement unit described in Subsection (11)(a) or (b) of this Rule R33-12-3, the chief procurement officer or the chief procurement officer's designee.

R33-12-4. Composition of Board.

(1) The Board consists of fifteen voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.

(2) The secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.

R33-12-5. Calling Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services or Director may also call a meeting.

R33-12-6. Chair, Presiding Officer and Basic Responsibilities.

(1) The Chair shall be the Presiding Officer at all Board meetings.

(2) The Chair may choose, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.

(3) The Presiding Officer shall be able to make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director may also place items on the Board agenda.

(5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

R33-12-7. Secretary to the Board.

(1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings laws. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings laws.

(2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R33-12-8. Meetings.

Meetings are generally held in the conference room of the Division of Purchasing and General Services, 3rd floor, State Office Building, Capitol Hill, in Salt Lake City, Utah. The date, time and location may also be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R33-12-9. Compliance with Open and Public Meeting Laws.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings laws. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meetings laws.

R33-12-10. Notice and Agenda.

(1) Notice shall be given of all meetings in accordance with the Open and Public Meetings laws.

(2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. Board members may also contact the Chair or Director about any request for agenda items.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer or Director.

(5) Each agenda shall include an agenda item regarding whether there are any matters to be placed on a future agenda.

R33-12-11. Attendance, Quorum and Voting.

(1) Eight members of the Board are required for a quorum

to transact business.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least five members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.

(4) Members must be in attendance, including by electronic means in accordance with this Rule, in order to vote.

R33-12-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

(1) Any voting member may make or second a motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those that request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions.

R33-12-13. Committees and Appeals Panel.

The Board may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-12-19.

R33-12-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to leave the meeting.

R33-12-15. Rules of Order.

All matters not covered by this Rule R33-12 shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

R33-12-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R33-12-16 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) if one or more members of the Board desire to participate electronically, such member(s) shall contact the Director or Secretary. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer or Director shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be present and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings laws. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member participating electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R33-12-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R33-12-1 through R33-12-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

R33-12-18. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule R33-12-18 will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;
(ii) customer;
(iii) competitor;
(iv) security holder of a party; or
(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule R33-12-18, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-12-19. Procurement Appeals Panel.

(1) In General and Grounds for Appeal. This Rule R33-12-19 shall apply for any appeal of a protest decision to the Procurement Policy Board where such appeal is made in accordance with the Utah Procurement Code. The grounds for an appeal are limited to those specified in the protest letter as required by the Utah Procurement Code.

(2) Creation of Procurement Appeals Panel. Within seven days after the day on which the Chair receives a timely written notice of appeal in accordance with the Utah Procurement Code, the Chair or a designee of the Chair who is a member of the Board shall appoint a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom shall be:

(a) a member of the Procurement Policy Board; or

(b) a designee of a member appointed as indicated below, if the designee is approved by the Chair.

(3) Designee of Chair to make Appointment in Special Circumstances. When the Chair is employed by the public entity responsible for the solicitation, contract award or other action complained of, the Chair shall have a designee who is a member of the Board and not so employed make the appointments.

(4) Panel to have a Chair. The appointments made under this Rule shall include the designation of a Chair for the Panel.

(5) Conflicts of Interest. A person may not be appointed to the panel if the person is employed by the public entity responsible for the solicitation, contract award or other action complained of.

(6) Odd number of members. The Panel shall consist of an odd number of members.

(7) Informal Proceeding, Rules of Evidence Not Applicable. The Panel shall conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed unless all parties stipulate to a later date or the panel continues the proceeding beyond the 60 day period if the panel determines the continuance is in the interests of justice. The Rules of Evidence do not apply to an appeal proceeding.

(8) Notice of Proceeding. At least seven days before the proceeding, the Panel shall mail, email, or hand deliver a written notice of the proceeding to the parties to the appeal.

(9) Written Decision. Within seven days after the day on which the proceeding ends, the Chair of the Panel shall issue a written decision on the appeal to the parties to the appeal and to the protest officer. The written decision must be supported by at least two panel members.

(10) Record for Decision. The Panel shall consider the appeal based solely on the following without taking any additional evidence:

(a) the protest decision;

(b) the record considered by the person who issued the protest decision; and

(c) if a protest hearing was held, the record of the protest hearing.

(11) Standard for Review. The Panel shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.

(12) Parameters if Decision not Upheld on Appeal. If the Panel determines that the decision of the Protest Officer is arbitrary and capricious or clearly erroneous, the panel:

(a) shall remand the matter to the Protest Officer to cure the problem or render a new decision;

(b) may recommend action that the Protest Officer should take; and

(c) may not order that a contract be awarded to a certain person, a contract or solicitation be cancelled, or any other action to be taken other than the action described in (12)(a) above.

(13) Expedited Proceedings. A proceeding may be expedited as described in Rule R33-12-19(27).

(14) Electronic Participation. Electronic Participation by Panel Members and Participants. Any panel member or participant may participate electronically by:

(a) notifying the Chair of the Panel at least 24 hours in advance of the proceeding;

(b) the Chair of the Panel will allow such electronic participation provided that the electronic means for such participation, by phone, computer or otherwise, is available at the location; and

(c) the electronic means allows other members of the Panel and other participants to hear the person or persons participating electronically.

(15) Security Deposit.

(a) A person who files an appeal shall, at the time the appeal is filed, pay a security deposit or post a bond with the protest officer in an amount that is the greater of:

(i) for the appeal of a debarment or suspension, $1000;

(ii) for any type of procurement, $1000;

(iii) for an invitation for bids, 5% of the lowest bid amount, if the bid opening has occurred, or 5% of the estimated contract cost, which shall be the amount of the budget allocated by the public entity for the subject procurement, if the bid opening has not yet occurred;

(iv) for a request for proposals, 5% of the lowest cost proposed in a response to the request for proposals, if the opening of proposals has occurred, or 5% of the estimated contract cost, which shall be the amount of the budget allocated by the public entity for the subject procurement, if the opening of proposals has not yet occurred;

(v) for a type of procurement other than an invitation for bids or request for proposals, 5% of the amount of the budget allocated by the public entity for the subject procurement.

(b) For purposes of this Security Deposit, when the amount of the budget allocated by the public entity for the subject procurement is to be used, the following shall apply:

(i) the security deposit or bond posting does not need to be filed along with the appeal, but must be filed within 7 days of the appellant being notified of the budget allocated by the public entity for the subject procurement.

(c) The security deposit or bond posting may be waived or reduced under the following circumstances:

(i) where the Appellant in the notice of appeal has indicated that the Appellant is impecunious or otherwise faces an economic hardship in the ability to pay a security deposit or bond posting , and the Chair of the Panel determines that such condition exists;

(ii) where the Appellant in the notice of appeal has indicated other grounds acceptable to the Division of Purchasing and General Services to be appropriate; or

(iii) where the subject procurement involves a small purchase or any procurement below $10,000.

(d) If a waiver is denied under this Rule, the Appellant must post the appropriate security deposit or bond within seven days of date of receipt of the notice of denial or the appeal will be dismissed.

(e) The Chair of the Board shall dismiss an appeal filed under the matter if the Appellant fails to timely pay the security deposit or post the bond required by the Utah Procurement Code and this Rule.

(f) The Chair of the Board shall retain the security deposit or bond until the protest and any appeal of the protest decision is final.

(g) The Chair of the Board shall deposit the security deposit into an interest-bearing account.

(h) The Chair of the Board shall, after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the General Fund under this Rule.

(i) The Chair of the Board shall retain the bond until the protest and any appeal of the protest decision becomes final and thereafter either return the bond to the person who posted the bond or have the bond forfeited to the General Fund under this Rule.

(j) A security deposit that is paid, or a bond that is posted, under this Rule shall forfeit to the General Fund if:

(i) the person who paid the security deposit or posted the bond failed to ultimately prevail on appeal; and

(ii) the panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

(16) Discontinuance of Appeal. After notice of an appeal to the Board is filed in accordance with the Utah Procurement Code, no party may discontinue the appeal without prejudice, except as authorized by the Panel.

(17) Dismissal for Lack of Compliance. A Panel may dismiss an appeal that is assigned to the Panel if the appeal is not filed in accordance with the requirements of the Utah Procurement Code and this Rule enacted pursuant to the Utah Procurement Code.

(18) Appearance and Representation, Electronic Participation. A person may represent him or herself before the Panel. Any person or party may be represented by an attorney at law. Parties shall enter their appearances at the beginning of the proceeding or at such time as may be designated by the Panel by giving their names and addresses and stating their positions or interests in the proceeding.

(19) Intervention on Appeal.

(a) Only those persons who have intervened in the protest that is being appealed may intervene in the appeal process unless the grounds for intervention did not exist until the time of appeal. A Motion to Intervene must be received by the Protest Officer or Chair of the Board within seven days of being notified of the Appeal by the Protest Officer. A copy of the Motion to Intervene shall also be mailed or emailed to the Appellant.

(b) The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(c) Contents of a Motion to Intervene. Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A Motion to Intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(i) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(A) consumer;

(B) customer;

(C) competitor;

(D) security holder of a party; or

(E) the person's participation is in the public interest.

(d) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Chair of the Panel within seven calendar days after the Motion to Intervene is received by the Party of Record desiring to object, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Appeals Panel based on a determination that a reason for intervention exists as stated in this Rule.

(e) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Appeals Panel.

(20) Form of Pleadings and Documents. All documents and pleadings submitted to the Chair and the Panel shall indicate the name, mailing address, any email address and phone number of the submitting person as well as indicate by a certificate of service that it was provided to all other persons known to be a party in the proceeding.

(21) Signature. Pleadings shall be signed by the party or the participant, or by the party's attorney or other authorized representative, and shall reflect the address of the signer to whom any further notices should be sent. The signature shall be deemed to be a certification by the signer that he/she has read the pleading and that to the best of his/her knowledge and belief there is good ground to support it.

(22) Response. A Party of Record against whom a pleading is directed may file an answer or other response thereto. Answers or other responses shall contain a clear and concise statement of the matter relied upon as a basis for the answer or response, together with an appropriate prayer for relief.

(23) Motions. Motions may be submitted for the Panel's determination by either written or oral argument, and may be supported by affidavits. However, no new evidence is allowed in the appeal as prescribed by the Utah Procurement Code.

(24) Original and Copies. One original of all pleadings and documents submitted to the Panel, with attachments, shall be filed with the Panel. Filings in electronic form by email are encouraged. The Panel may thereafter direct that a copy of all pleadings and other documents be made available by the party filing same to any person whom the Panel determines may be affected by the proceedings, and who desires copies thereof.

(25) Service on Other Parties. All Parties of Record shall serve one copy of all pleadings and other documents on each of the other Parties of Record either by personal service, hand delivery, or by mailing/emailing a copy to the party's physical address or email address as shown in the filings of the Panel or the subject Purchasing Agency. In the event service is made by mail to a physical address, the party serving same shall attach to the original of the pleading a certificate that a true copy thereof was, on the appropriate date, mailed to the designated address by first class United States mail, properly addressed with postage prepaid. When any party has appeared by an attorney or other authorized representative, service upon such attorney or representative constitutes service upon the party.

(26) Answers or Responses. Answers or responses shall be filed with the Panel and served upon Parties of Record within ten days after service of the original pleading unless for good cause the Panel extends the time within which such answer or response may be made. All motions must be filed, and served

upon all Parties of Record, not later than three days prior to any date set for the proceeding before the Panel.

(27) Pre-Proceeding Conference and Expedited Proceedings.

(a) The Panel may, upon written notice to all parties, hold a pre-proceeding conference for the purpose of formulating and simplifying the issues or any other matter that assists with the proceeding. A person participating in a pre-proceeding conference on behalf of each party shall have authority to negotiate and agree to settlement of the dispute.

(b) Any party may request a pre-proceeding conference in an effort to expedite the proceeding. Upon such a request to expedite the proceeding, the Panel shall consider any expedited process that considers the needs to expedite the proceeding while assuring that the due process rights of all parties are protected.

(28) The Proceeding. The Panel shall set the time and place for the proceeding at the earliest practical date and written notice by mail or email shall be provided to each Party of Record and, at the discretion of the Panel, to any other interested persons. The Chair of the Panel shall establish the order of the proceeding, including the sequence and time limit for presentations. The proceeding shall be recorded or have a court reporter.

(29) Determination. After the Panel has reached a final decision by a majority vote, the Chair of the Panel shall prepare a written determination. A copy of the determination shall be served upon the Parties of Record as herein provided.

KEY: procurement, procedures, appeals, Procurement Policy Board
October 8, 2012 **63G-6-807**
63G-6-201(3)(a)(i)

R152. Commerce, Consumer Protection.
R152-34. Postsecondary Proprietary School Act Rules.
R152-34-1. Purpose.

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study, including online and distance education programs.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the Division that specifies a stated period for an institution to correct stipulated deficiencies, but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the Division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, in accordance with Section 13-34-113.

(9) "Suspension" means a negative action of the Division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on:

(i) transfer of credit from other accredited and recognized institutions,

(ii) recognized proficiency exams (CLEP, AP, etc.), and/or

(iii) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection (B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Title 53A Chapter 11, Utah Code Annotated; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans;

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions;

(u) A statement of the institution's surety or surety exemption status with the Division; and

(v) Such other information as the Division may reasonably require.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(1)(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset. The institution shall submit a sworn statement in a form specified by the Division attesting to the religious nature of the education offered.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the Division upon request.

(4) To qualify for exemption under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) To qualify for exemption under Section 13-34-105(1)(c):

(a) the profession for which the review program is offered must be recognized by a state or national licensing or certifying body;

(b) the students enrolled in the review program must previously complete education and/or training in the occupation or field required to be obtained by the certifying body; and

(c) the professional review program must provide only review and preparation for exams or other certifying tests that are required to be passed by the certifying body.

(6) The Division shall determine an institution's status in accordance with the categories contained in this section.

(7) An exempt institution shall notify the Division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(8) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34- 106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students;

(c) The name of the agent authorized to respond to student inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus;

(j) A statement that it maintains adequate insurance continuously in force to protect its assets;

(k) A disclosure as required by R152-34-7(1);

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-

date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) Financial information, as described in Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the Division.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) In accordance with U.C.A. Section 13-34-107(5), applicants shall pay registration fees established by the Division pursuant to U.C.A. Section 63J-1-504.

(2) The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month during which the registration remains lapsed.

(4) One year after issuance, an institution shall submit a review on a form provided by the Division and pay a fee as determined in Subsection (1) above. The review will evaluate an institution's financial information, surety requirements and the following statistical information:

(a) The number of students enrolled for the previous one-year period of registration;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated their registration or withdrew from the institution;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(5) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(6) The Division shall refuse to register an institution if the Division determines the following:

(a) the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) the violation(s) are relevant to the appropriate operation of the school; and

(c) there is reasonable doubt that the institution will provide students with an appropriate learning experience or that the institution will function in accordance with all applicable laws and rules.

(7) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:

(a) issue a certificate of registration;

(b) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(8) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than fifty percent (50%) of its assets within a three-year period. When this occurs, the following information shall be submitted to the Division:

(a) a copy of any new articles of incorporation;

(b) a current financial statement;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.

(11)(a) Before an original registration is issued, and except

as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five- hundred dollars ($187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars ($125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five- hundred dollars ($62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars ($25,000) may provide a surety of twelve thousand, five hundred dollars ($12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000), with a minimum surety amount of twelve thousand, five hundred dollars ($12,500) and a maximum surety amount of three hundred thousand dollars ($300,000).

(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-7a. Rules Relating to Accredited Institutions Under Section 13-34-107.5.

(1) To apply for an exemption certificate, an accredited institution shall submit a completed registration statement application as outlined in Section 13-34-107.5(3) and a copy of such portions of its current accreditation, financial statements and self-evaluation report as specified by the Division.

(2) In accordance with U.C.A. Section 13-34-107.5(7)(a), institutions applying for an exemption certificate shall pay fees established by the Division pursuant to U.C.A. Section 63J-1-504.

(3) An exemption certificate is valid for a two (2) year period; the Division will conduct a review of the registration in alternating years. The Division will request and review updates on the institutions accreditation status.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice. Tuition paid to an institution, and related student loans, are consumer transactions as defined in Utah Code Title 13, Chapter 11.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s),at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) Institutions shall disclose that they are primarily operated for educational purposes if this is not apparent from the legal name.Institutions shall not advertise educational services in conjunction with any other business or establishment, nor in "help wanted" or "employment opportunity" columns of newspapers, magazines or similar forums in such a way as to lead readers to believe that they are applying for employment rather than education and training. Any advertisement in "help wanted" or "employment opportunity" forums shall be for positions open for immediate employment only;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The Division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(h) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(i) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(ii) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(iii) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34- 109.

(1) Should an institution cease operations or otherwise discontinue its educational activities, it shall immediately notify the Division in writing 30 days prior to closing. The chief administrative officer shall send formal written notice to the Division; this notice shall include:

(a) The date on which the institution will officially close;

(b) A written plan for access to and preservation of permanent records;

(c) What actions the institution plans to take in regards to its students; and

(d) In the event an institution closes with students enrolled who have not completed their programs, a list of such students, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the Division, with all particulars.

(2) Once an institution has notified the Division of its intent to cease operations, it shall not advertise, recruit, offer or otherwise enroll new students into its programs.

(3) School records consist of the following permanent scholastic records for all students who are admitted, withdrawn or terminated:

(a) entrance application and admission acceptance information;

(b) attendance and performance information, including transcripts which shall at a minimum include the program in which the student enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates; and

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(4) An institution that closes or otherwise discontinues operations shall maintain its surety required under R152-34-7(11) and/or R152-34-7(12) until:

(a) At least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(b) The institution has satisfied the closure requirements of this section by providing documentation acceptable to the Division to show that it has satisfied all possible claims for refunds that may be made against the institution by students of

the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

(5) Within ten (10) business days after the closure, the institution shall provide the Division with all the information outlined above and in accordance with Section 13-34-109, including copies of student transcripts.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The Division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The Division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the Division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(i) failure to comply with the Postsecondary Proprietary Schools Act or these rules;

(j) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(k) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(l) failure to provide reasonable information to the Division as requested from time to time.

(3) A violation of these administrative rules is also a violation of the Utah Consumer Sales Practices Act and accompanying administrative rules.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34- 201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary schools, registration, requirements, consumer protection
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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 at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

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

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

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

(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 retest.

(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 - $2,5000
(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, 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(1)(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 prefilled prescriptions as provided in Subsection (1)(g) above.
(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Reserved.
Reserved.

R156-17b-609. Operating Standards - Medication Profile System.
In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:
(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.
(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:
(a) full name of the patient, address, telephone number, date of birth or age and gender;
(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:
(i) name of prescription drug;
(ii) strength of prescription drug;
(iii) quantity dispensed;
(iv) date of filling or refilling;
(v) charge for the prescription drug as dispensed to the patient; and
(c) any additional comments relevant to the patient's drug use.
(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.
In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:
(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:
(a) the name and description of the prescription drug;
(b) the dosage form, dose, route of administration and duration of drug therapy;
(c) intended use of the drug, when known, and expected action;
(d) special directions and precautions for preparation, administration and use by the patient;
(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
(f) techniques for self-monitoring drug therapy;
(g) proper storage;
(h) prescription refill information;
(i) action to be taken in the event of a missed dose;
(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
(k) the date after which the prescription should not be taken or used, or the beyond use date.
(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.
(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.
(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.
(5) Counseling shall be:
(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;
(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and
(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.
(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.
(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:
(a) date of the delivery;
(b) unique identification number of the prescription drug order;
(c) patient's name;
(d) patient's phone number or the phone number of the person picking up the prescription; and
(e) signature of the person picking up the prescription.
(8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:
(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;
(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

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

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

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

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

(b) collecting and reviewing patient histories;

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

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

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

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

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

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

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

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

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

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

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

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

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

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

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

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

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

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

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

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) either:

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

(ii) the pharmacist is unable to contact the practitioner

after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

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

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

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

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

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

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

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

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

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

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

(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 as 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.

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R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rule.
R156-38b-101. Title.

This rule is known as the "State Construction Registry Rule."

R156-38b-102. Definitions.

In addition to the definitions in Title 38, Chapter 1a, Preconstruction and Construction Liens; Title 38, Chapter 1b, Government Construction Projects; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or this rule:

(1) "Alternate means" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate means or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1b-201(3)(c).

(5) "Private project" means a construction project, commenced after July 31, 2011, that is not a government project.

(6) "SCR" means the State Construction Registry established in Sections 38-1a-201 through 38-1a-211.

R156-38b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 38-1a-202(3)(a) to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Subsection 38-1a-202(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsections 38-1a-202(2) and (4) through (7), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of $5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The designated agent shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. There shall be a single reliable redundant power supply for the entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days which are defined as Mondays through Fridays with legal holidays excluded. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain valid software licenses for all purchased software used for the SCR.

(7) System Monitoring. The designated agent shall provide continuous monitoring of SCR environment.

(8) System Support. The designated agent shall provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the designated agent.

(2) The designated agent shall issue a unique user ID and password to each user who successfully registers to use the SCR.

(3) The information gathered in the registration process shall be maintained in the SCR as the user profile.

(4) The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering; and

(b) email address, if any.

(5) The designated agent shall provide the ability for a

user to view and modify the user's profile.

(6) The designated agent shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(7) The designated agent shall pre-populate filings with any information available in the user's profile.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction record of completed transactions by registered user.

R156-38b-501. Required Information for SCR Filing Notices.

(1) Electronic notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the designated agent unless the person complies with the content requirements for the SCR filing.

(2) The designated agent shall verify that data is submitted for each of the content requirements, but it is not responsible for the accuracy, suitability, or coherence of the data.

R156-38b-502. Merging Notices of Commencement.

(1) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, the designated agent shall search the SCR for any existing notices of commencement before allowing a user to create a new notice of commencement.

(a) If an existing notice of commencement is identified the following procedures apply:

(i) For an electronic filing:

(A) the designated agent shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing.

(B) The designated agent shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(ii) For an alternate means filing, the designated agent shall notify the filer by electronic or alternate means as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement.

(b) As part of the process described in Subsection R156-38b-502(1), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search.

(c) If no existing notice of commencement is identified for the particular project, the designated agent shall allow the person who submitted the filing to file a new notice of commencement.

(2) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(a) The affected SCR filings shall reflect the effective date of the merger.

(b) The designated agent shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(c) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(3) The person making a notice filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project. Neither the Division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the designated agent is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the designated agent allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-505. Alternate Filings.

(1) Alternate Means of Filing. The alternate means of filing are those established by Subsection 38-1a-201(1)(e)(ii), including U.S. Mail and telefax. Private commercial courier is established as an additional alternate means of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate means filings shall be the same as for electronic filings as set forth for Notices in Title 38, Chapters 1a and 1b or this rule.

(3) Format Requirements. Alternate means filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate means filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate means filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate means filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) In accordance with Subsection 38-1a-202(6), the designated agent shall meet or exceed the following data entry standards for alternate means filings:

(i) a primary operator shall manually input information filed by alternate means;

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all

entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate means filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the designated agent accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate means filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the Designated Agent.

(1) A filing that is not accepted by the designated agent shall not be considered to be filed.

(2) The designated agent shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the electronic filing to attempt to correct any defects, if possible.

(3) The designated agent shall notify a person whose alternate means filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate means filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate means that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the designated agent shall maintain a record of all processing fees received with filings submitted by alternate means that are not accepted.

R156-38b-509. Withdrawal of Filings.

(1) In accordance with Subsections 38-1a-307(3) and 38-1a-501(5), the designated agent shall, upon request of a person who filed an accepted notice filing allow the person to designate the filing as withdrawn.

(2) Notification of a filing withdrawal shall be provided to the same persons as required for the original successful filing.

(3) A withdrawn filing shall indicate that the filing is no longer given effect.

(4) A withdrawn filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1a-401, 38-1a-501, or 38-1a-506.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate means filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(a) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(b) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1a-201(1)(g), the designated agent shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the designated agent;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) The designated agent shall send a transaction receipt to a person who submits a filing by alternate means that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall keep accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall conduct or contract for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1a-202(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1a-202(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is withdrawn under Subsection 38-1a-307(3) or 38-1a-501(5).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsection 38-1a-207(5), construction projects in the SCR shall be accessible to an interested person who has registered with the designated agent and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
December 10, 2012 38-1a-101
Notice of Continuation February 8, 2010 38-1b-101

R277. Education, Administration.
R277-108. Annual Assurance of Compliance by Local School Boards.
R277-108-1. Definitions.

A. "Annual assurance letter" means a letter required annually from each local school board by the Board to be received no later than October 1 of each year that provides the required compliance information and documentation, if directed, for identified programs and funds.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

R277-108-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

B. The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-3. Board/USOE Responsibilities.

A. The Board shall provide to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school governing boards a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 30 of each year.

B. The list shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance letter.

C. The Board shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible.

R277-108-4. Local Board and Identified School Responsibilities.

A. Local Boards shall submit the required Annual Assurance Letter(s) and other compliance forms on or before dates identified by the Board.

B. In the event that a local school board is unable to provide required assurances, compliance information or forms by required dates, the local school board shall provide to the USOE a written explanation of the local school board's inability and provide a compliance date. The request for delay in providing the assurance shall be reviewed by the Board or its designee and accepted or rejected in a timely manner.

R277-108-5. Assurances.

A. Each local school board and charter school governing board shall provide, consistent with state law, written assurance of the following:

(1) the National motto is displayed in schools consistent with Section 53A-13-101.4(6);

(2) the Pledge of Allegiance is recited in public schools consistent with Section 53A-13-101.6;

(3) a policy has been developed, in consultation with school personnel, parents, and school community, to provide for effective implementation of student education plans/student education occupation plans (SEPs/SEOPs) consistent with Section 53A-1a-106(2)(b);

(4) compliance with Section 53A-3-426 in that it does not endorse or provide preferential treatment for any education employee association;

(5) a policy has been developed for Quality Teaching Block Grant Program consistent with Section 53A-17a-124;

(6) a policy has been developed on education association leave consistent with Section 53A-3-425;

(7) each public school within the district has established a community council consistent with Section 53A-1a-108, and the community council members have been advised of their responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.5;

(8) the local school board has provided the USOE with required Utah Performance Assessment System for Students (U-PASS) test results in order for the USOE to fulfill the requirements of 53A-1-605;

(9) the district does not make payroll deductions from the wages of its employees for political purposes consistent with Section 34-32-1.1(2);

(10) the local school board has implemented a training program for school administrators consistent with Section 53A-3-402(1)(f);

(11) the local school board has an educator evaluation program developed by a joint committee including classroom teachers, parents and administrators consistent with Section 53A-10-103;

(12) the local school board or charter school governing board has presented and implemented an electronic device policy consistent with the timelines and provisions of R277-495;

(13) the school district or charter school has posted collective bargaining agreement(s) on the school district or charter school website within ten days of the ratification or modification of any collective bargaining agreement consistent with Section 53A-3-428; and

(14) by May 15, 2010, the school district or charter school has posted certain public financial information on the school district or charter school website consistent with Sections 63A-3-401 through 63A-3-404.

B. Letters from local school boards assuring compliance with the laws above are due to the State Superintendent of Public Instruction no later than October 1 of each year.

R277-108-6. Penalties for Noncompliance.

A. The Board shall request written explanation(s) from local school boards and identified schools that fail to meet reporting and compliance deadlines.

B. Following an opportunity to provide explanations and request delays, local school boards and identified schools shall be notified of penalties assessed by the Board against the local school boards.

C. Penalties may include:

(1) warning letters;

(2) letters of reprimand sent to the local school board with copies to appropriate Legislative committees;

(3) charter school review under R277-481; or

(4) interruption of monthly transfers of funds specified for administrative costs under Section 53A-17a-108, interruptions of disbursement of state aid under Section 53A-1-401(3) or withholding of specific program funds.

R277-108-7. Record Retention.

Letters of Assurance, as required by the Board, shall be kept on file at the USOE for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance
December 17, 2012 **Art X Sec 3**
Notice of Continuation October 5, 2012 **53A-6-702**
53A-1-401(3)

R277. Education, Administration.
R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program.
R277-422-1. Definitions.

A. "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

B. "Board" means the Utah State Board of Education.

C. "Board local levy" means a state-supported program under Section 53A-17a-164 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program.

D. "Free or reduced meal applications" means the applications received by a school district or charter school under the Board-supervised federal Child Nutrition Program.

E. "Local board" means the school board members elected to govern a school district.

F. "State-supported" means a formula-based state contribution of funds to the voted local levy program and the Board local levy program as defined in Section 53A-17a-133(3) and Section 53A-17a-164(3).

G. "USOE" means the Utah State Office of Education.

H. "Voted local levy" means a state-supported program in which a voter-approved property tax levy under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

I. "Weighted pupil unit (WPU)" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to establish rules for school productivity and cost effectiveness measures, federal programs, school budget formats, and 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 specify requirements, timelines, and clarifications for the state-supported voted local levy, board local levy, and reading improvement program.

R277-422-3. Requirements and Timelines for State-Supported Voted Local Levy.

A. A local board may establish a state-supported voted local levy program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted local levy or voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted local levy equal to or less than the levy authorized by the election.

C. A school district may budget an increased amount of ad valorem property tax revenue from a voted local levy in addition to revenue from new growth without required compliance with the advertisement requirements if the voted local levy is or was approved:

(1) on or after January 1, 2003;

(2) within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax; and

(3) for a voted local levy approved or modified on or after January 1, 2009, the proposition submitted to the voters contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

D. The state provides state guarantee funds to support the district voted local levy according to the amount specified in Section 53A-17a-133(3) and the Board local levy according to the amount specified in Section 53A-17a-164(3).

E. State and local funds received by a local board under the voted local levy program are unrestricted revenue and may be budgeted and expended within the school district's general fund.

F. In order to receive state support for an initial voted local levy tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial voted local levy tax rate.

G. If a school district qualifies for state support the year prior to an increase in its existing voted local levy; and:

(1) does not receive voter approval for an increase after June 30 of the previous fiscal year and before December 2 of the previous fiscal year; and

(2) intends to levy the additional rate for the fiscal year starting the following July 1; then

(3) the district shall only receive state support for the existing voted local levy tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. K-3 Reading Achievement Program.

A. The K-3 Reading Improvement Program consists of program funds and is created to achieve the state's goal of having third graders reading at or above grade level.

B. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150 which requires matching funds and Section 53A-17a-151.

(2) The following data shall be used for the reading fund calculations:

(a) The most recent numbers of adjusted assessed valuations received by the USOE;

(b) The previous year's tax collection rate;

(c) The previous year's number of Free and Reduced Price Meal applications; and

(d) The current fiscal year total number of WPUs received by LEAs for the basic school program.

KEY: education, finance

December 17, 2012	**Art X Sec 3**
Notice of Continuation October 5, 2012	**53A-1-402(1)(f)**
	53A-1-401(3)
	53A-17a-133
	53A-17a-164
	53A-17a-150
	53A-17a-151
	59-2-919

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

C. "Board" means the Utah State Board of Education.

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information;

(6) completion of employee background checks; and

(7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE. This definition is effective until July 1, 2011.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2008-09 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

L. "USOE" means Utah State Office of Education.

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service. This definition becomes effective on July 1, 2011, the date when UTREx becomes available to all Utah LEAs.

N. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

O. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx as of July 1, 2011. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;

(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 7

(1) Data Clearinghouse File - final comprehensive update for prior year - Data, Assessment, and Accountability - effective until July 1, 2011;

(2) UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011.

E. July 15

(1) Adult Education - final report for prior year;

(2) Classified Personnel Report - for prior year - Business Services;

(3) Driver Education Report - for prior year - Educator Quality;

(4) ESEA Choice and Supplemental Services Report - for prior year;

(5) Fee Waivers Report - for prior year;

(6) Fire Drill Compliance Statement - for prior year;

(7) Home Schooled Students Report - for prior year;

(8) Teacher Benefits Report - for prior year;

(9) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports.

F. September 15

(1) Membership Audit Report - for prior year;

(2) Adult Education - Financial Audit for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2011;

(2) UTREx - update as of October 1 for current year - effective on July 1, 2011;

(3) YICSIS - update as of October 1 for current year.

I. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Pupil Transportation Statistics for state funding:

(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;

(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;

(4) Negotiations report - for current year.

J. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report - for prior year.

L. December 15

(1) Data Clearinghouse File - update as of December 1 for

current year - effective until July 1, 2011;

(2) Bus Driver Credentials Report - for current year - Business Services.

M. December 15 - UTREx - update as of December 1 for current year - effective on July 1, 2011.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend or state holiday in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance and Statistics at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;

(2) The signatures of the LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance and Statistics shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 7 Final Data Clearinghouse File - final comprehensive update for prior year- Data, Assessment, and Accountability - effective until July 1, 2011;

(3) July 7 UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011;

(4) November 15 CACTUS - update for current year.

R277-484-5. Official Data Source and Required LEA Compatibility.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA; and

(3) submission of data files to the U.S. Department of Education via EDEN.

C. Prior to an LEA acquiring a student information system, replacing an existing student information system, or modifying data elements in an existing student information system, an LEA shall have USOE approval to ensure that the LEA's new or modified student information system maintains compatibility with UTREx.

D. No later than October 1, 2013, all public education LEAs shall begin submitting daily updates to the USOE Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification. Failure to do so shall be a violation of Board reporting rules.

E. All public high school transcripts requested by public education post-secondary schools shall be electronically submitted to those public education post-secondary schools if the post-secondary schools are capable of receiving transcripts through the electronic transcript service designated by the USOE. This process is mandatory for all public high schools after September 1, 2013.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 4, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

R277-484-9. Disclosure of Data for Research.

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify

researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) A standardized, de-identified research data package shall be prepared each year by the USOE for qualified researchers to systematically protect individual student data.

(3) The USOE is not obligated to fill every data request and may develop procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act.

(a) In filling data requests, higher priority shall be given to requests that will help improve instruction in Utah's public schools.

(b) In filling data requests, higher priority shall be given to requests from universities, colleges, schools, faculty, students and government entities residing in Utah.

(4) A fee may be charged to prepare data or to deliver data, particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to USOE at least 10 business days prior to the public release.

B. Student information

(1) Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6), so that:

(a) the individual data is de-identified, meaning it is not possible to trace the data to an actual student.

(b) the recipient of student data shall agree to not report or publish data in a manner that discloses a student's identity. For example, reporting test scores for a race subgroup that has a count, also known as n-size, less than 10 could enable someone to identify the actual students and shall not be published.

C. Licensed educator information

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE non-disclosure agreement if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

F. The USOE may provide personally identifiable data about students or licensed educators consistent with state and federal law. Some data may be provided only if the researcher or contractor agrees to preserve the confidentiality of private and protected data.

KEY: data standards, reports, deadlines, research data requests

March 12, 2012 Art X Sec 3

Notice of Continuation December 31, 2012 53A-1-401(3)

53A-1-301(3)(d) and (e)

R277. Education, Administration.
R277-487. Public School Student Confidentiality.
R277-487-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "LEA" means local education agency, including local school boards/charter school governing board, public school districts and schools, and charter schools.

D. "Student record" means a record in any form, including handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche, that is directly related to a student and maintained by an educational agency or institution or by a party acting for an agency or institution.

R277-487-2. 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 Section 53A-13-301(3) which requires the Board to make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records, and by 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 standards and procedures related to public school student confidentiality.

R277-487-3. Board Responsibilities.

A. The Board shall develop resource materials to train employees, student aides, and volunteers of an LEA regarding confidentiality of student information and student records, as defined in FERPA.

B. The Board shall make the materials available to each LEA.

R277-487-4. LEA Responsibilities.

A. LEAs shall establish policies and provide appropriate training for employees regarding the confidentiality of student records including an overview of all federal, state, and local laws that pertain to the privacy of students, their parents, and their families.

B. LEAs shall require password protection for all student records maintained electronically.

C. An LEA may adopt policies related to public school student confidentiality to address the specific needs or priorities of the LEA.

R277-487-4. Public Education Employee and Volunteer Responsibilities.

A. All public education employees, student aides, and volunteers in public schools shall become familiar with federal, state, and local law regarding the confidentiality of student information and student records.

B. All public education employees, student aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, and local laws with regard to student records.

C. An employee, student aide, or volunteer shall maintain student records in a secure and appropriate place as designated by policies of an LEA.

D. An employee, student aide, or volunteer accessing student records in electronic format shall comply with policies of an LEA regarding the procedures for maintaining confidentiality of electronic records.

E. An employee, student aide, or volunteer shall not share, disclose, or disseminate passwords for electronic maintenance of student records.

F. Public education employees licensed under Section 53A-6-104 shall access and use student information and records consistent with R277-515, Utah Educator Standards. Violations may result in licensing discipline.

G. All public education employees, student aides and volunteers have a responsibility to protect confidential student information and access records only as necessary for their assignment(s).

KEY: students, records, confidentiality

November 8, 2011	**Art X Sec 3**
Notice of Continuation December 31, 2012	**53A-13-301(3)**
	53A-1-401(3)

R305. Environmental Quality, Administration.
R305-8. Board Member Attendance Requirements.
R305-8-101. Purpose and Authority.

The purpose of this rule is to establish standards for board member attendance at regularly scheduled board meeetings. This rule is authorized by Section 19-1-201(1)(d)(i)(A).

R305-8-102. Notification Requirement.

A board member shall notify the board chair of an absence at least two business days prior to the board meeting in order to be excused. A board member who fails to notify the board chair of an absence at least two business days prior to the board meeting shall not be excused.

R305-8-103. Standards for Attendance.

(1) In order to effectively execute board duties, board members shall regularly attend board meetings.

(2) A board member shall be deemed to be out of conformity with the requirement to regularly attend board meetings if:

(a) the member has two unexcused absences from a board meeting within a one-year period;

(b) the member misses three consecutive meetings for any reason; or

(c) the member misses one-third of the total number of board meetings in a one year period.

R305-8-104. Remedy for Failure to Meet Standards for Attendance.

(1) If a board member fails to meet standards for attendance, the board chair shall:

(a) notify the board member in writing; and

(b) schedule an agenda item for the next board meeting to consider dismissal of the board member.

(2) The board member shall be given an opportunity to address the board at that meeting.

(3) The Board may recommend to the Governor that the member be removed from the board.

KEY: board membership, board attendance, board member dismissal
December 19, 2012 19-1-201(1)(d)(i)(A)

R307. Environmental Quality, Air Quality.
R307-105. General Requirements: Emergency Controls.
R307-105-1. Air Pollution Emergency Episodes.

(1) Determination of an episode and its extent or stage shall be made by the director taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE				
8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE				
1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	
2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

(2) The director shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

R307-105-2. Emergency Actions.

(1) If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

(a) Make public announcements pertaining to the existence, extent and area of the episode.

(b) Require corrective measures as necessary to prevent a further deterioration of air quality.

(2) Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

KEY: air pollution, emergency powers, governor*, air pollution
September 15, 1998 19-2-112
Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on May 4, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII,

Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on April 6, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
December 6, 2012 19-2-104(3)(e)
Notice of Continuation February 1, 2012

R307. Environmental Quality, Air Quality.
R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.
R307-121-1. Authorization and Purpose.

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase, in accordance with 59-7-605(3) or 59-10-1009(3), to the director for an OEM vehicle or the conversion of a motor vehicle for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"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 motor vehicle or equipment eligible for the tax credit.

"Fuel economy standards" means fuel economy standards as defined in Subsection 59-7-605(1)(f) and 59-10-1009(1)(f) or 31 miles per gallon equivalent for a plug-in electric drive motor vehicle.

"Miles per gallon equivalent" means the miles a vehicle can drive with the energy equivalent of one gallon of gasoline.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(i) and 59-10-1009(1)(i).

"Plug-in Electric Drive Motor Vehicle" means plug-in electric drive motor vehicle as defined in Subsection 59-7-605(1)(a)(ii) or 59-10-1009(1)(a)(ii).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective February 1, 2010.

R307-121-3. Proof of Purchase to Demonstrate Eligibility for OEM Compressed Natural Gas Vehicles.

To demonstrate that an OEM Compressed Natural Gas motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM Compressed Natural Gas vehicle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the vehicle identification number (VIN), the technician's ASE certification number, and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration.

R307-121-4. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles that meet Air Quality and Fuel Economy Standards.

To demonstrate that a motor vehicle is eligible for the tax credit based on air quality and fuel economy standards, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

(1) a copy of the motor vehicle's window sticker, which includes its VIN, or equivalent manufacturer's documentation;

(2) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase;

(3) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle;

(4) the underhood identification number or engine group of the motor vehicle; and

(5) a copy of the current Utah vehicle registration.

R307-121-5. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to Natural Gas or Propane.

To demonstrate that a conversion of a motor vehicle to be fueled by natural gas or propane is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), 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) a copy of the motor vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, 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 motor vehicle;

(6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(i)(C) or 59-7-605(1)(c)(i)(C);

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-121-6. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to Electricity.

(1) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

(a) the VIN;

(b) the fuel type before conversion;

(c) the fuel type after conversion;

(d) each of the following:

(i) the conversion equipment manufacturer,

(ii) the conversion equipment model number,

(iii) the date of the conversion, and

(iv) the name, address, and phone number of the person that converted the motor vehicle;

(e) an original or copy of the purchase order, customer invoice, or receipt; and

(f) a copy of the current Utah vehicle registration.

(2) If the converted motor vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

(3) If the converted motor vehicle has an auxiliary source of combustion emissions, then the applicant shall submit:

(a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and

(c) Provide the EPA Certificate of Conformity or equivalent documentation that is consistent with requirements outlined in 76 FR 19830 April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(i)(C) or 59-7-605(1)(c)(i)(C).

R307-121-7. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) the conversion equipment manufacturer and model number;

(5) the date of the conversion;

(6) the name, address and phone number of the person that converted the special mobile equipment; and

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) the EPA Certificate of Conformity, or an Executive Order from the California Resource Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(ii)(B) or 59-7-605(1)(c)(ii)(B).

R307-121-8. Applicability.

(1) The definitions of plug-in electric drive motor vehicle and fuel economy standards in R307-121-2 shall apply to all purchases as of January 1, 2011.

(2) Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

KEY: air pollution, alternative fuels, tax credits, motor vehicles

January 1, 2012 **19-2-104**
Notice of Continuation January 23, 2012 **19-1-402**
59-7-605
59-10-1009

R307. Environmental Quality, Air Quality.
R307-130. General Penalty Policy.
R307-130-1. Scope.

This policy provides guidance to the director in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

R307-130-2. Categories.

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category are listed.

(1) Category A. $7,000-10,000 per day:

Violations with high potential for impact on public health and the environment including:

(a) Violation of emission standards and limitations of NESHAP.

(b) Emissions contributing to nonattainment area or PSD increment exceedences.

(c) Emissions resulting in documented public health effects and/or environmental damage.

(2) Category B. $2,000-7,000 per day.

Violations of the Utah Air Conservation Act, applicable State and Federal regulations, and orders to include:

(a) Significant levels of emissions resulting from violations of emission limitations or other regulations which are not within Category A.

(b) Substantial non-compliance with monitoring requirements.

(c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A.

(d) Significant and/or knowing violations of "notice of intent" and other notification requirements, including those of NESHAP.

(e) Violations of reporting requirements of NESHAP.

(3) Category C. Up to $2,000 per day.

Minor violations of the Utah Air Conservation Act, applicable State and Federal Regulations and orders having no significant public health or environmental impact to include:

(a) Reporting violations

(b) Minor violations of monitoring requirements, orders and agreements

(c) Minor violations of emission limitations or other regulatory requirements.

(4) Category D. Up to $299.00.

Violations of specific provisions of R307 which are considered minor to include:

(a) Violation of automobile emission standards and requirements

(b) Violation of wood-burning regulations by private individuals

(c) Open burning violations by private individuals.

R307-130-3. Adjustments.

The amount of the penalty within each category may be adjusted and/or suspended in part based upon the following factors:

(1) Good faith efforts to comply or lack of good faith. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State to include accessibility to information and the amount of State effort necessary to bring the source into compliance.

(2) Degree of wilfulness and/or negligence. In assessing wilfulness and/or negligence, factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, and whether the violator knew of the legal requirements which were violated.

(3) History of compliance or non-compliance. History of non-compliance includes consideration of previous violations and the resource costs to the State of past and current enforcement actions.

(4) Economic benefit of non-compliance. The amount of economic benefit to the source of non-compliance would be added to any penalty amount determined under this policy.

(5) Inability to pay. An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the source to pay.

R307-130-4. Options.

Consideration may be given to suspension of monetary penalties in trade-off for expenditures resulting in additional controls and/or emissions reductions beyond those required to meet existing requirements. Consideration may be given to an increased amount of suspended penalty as a deterrent to future violations where appropriate.

KEY: air pollution, penalty
July 13, 2007 19-2-104
Notice of Continuation February 1, 2012 19-2-115

R307. Environmental Quality, Air Quality.
R307-165. Emission Testing.
R307-165-1. Purpose.

R307-165 establishes the frequency of emission testing requirements for all areas in the state.

R307-165-2. Testing Every 5 Years.

Emission testing is required at least once every five years of all sources with established emission limitations specified in approval orders issued under R307-401 or in section IX, Part H of the Utah state implementation plan. In addition, if the director has reason to believe that an applicable emission limitation is being exceeded, the director may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. Sources approved in accordance with R307-401 will be tested within six months of start-up. The Board may grant exceptions to the mandatory testing requirements of R307-165-2 that are consistent with the purposes of R307.

R307-165-3. Notification of DAQ.

At least 30 days prior to conducting any emission testing required under any part of R307, the owner or operator shall notify the director of the date, time and place of such testing and, if determined necessary by the director, the owner or operator shall attend a pretest conference.

R307-165-4. Test Conditions.

All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combinations of fuels, use raw materials, and maintain process conditions representative of normal operations. In addition, the source shall operate under such other relevant conditions as the director shall specify.

R307-165-5. Rejection of Test Results.

The director may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the director was not provided an opportunity to have an observer present at the test.

KEY: air pollution, emission testing
September 2, 2005 19-2-104(1)
Notice of Continuation August 4, 2010

R307. Environmental Quality, Air Quality.
R307-170. Continuous Emission Monitoring Program.
R307-170-1. Purpose.

The purpose of this rule is to establish consistent requirements for all sources required to install a continuous monitoring system (CMS) and for sources who opt into the continuous emissions monitoring program.

R307-170-2. Authority.

Authority to require continuous emission monitoring devices is found in 19-2-104(1)(c), and authorization for a penalty for rendering inaccurate any monitoring device or method is found in 19-2-115(4). Authority to enforce 40 CFR Part 60 is obtained by its incorporation by reference under R307-210.

R307-170-3. Applicability.

Except as noted in (1) and (2) below, any source required to install a continuous monitoring system to determine emissions to the atmosphere or to measure control equipment efficiency is subject to R307-170.

(1) Any source subject to 40 CFR Part 60 as incorporated by R307-210, Standards of Performance for New Sources, is not subject to R307-170-6, Minimum Monitoring Requirements for Specific Sources.

(2) Any source required by an approval order issued under R307-401 to operate a continuous monitoring system to satisfy the requirements of R307-150, Periodic Reports of Emissions and Availability of Information, is not subject to R307-170-9(7), Excess Emission Report.

R307-170-4. Definitions.

The following additional definitions apply to R307-170.

"Accuracy" means the difference between a continuous monitoring system response and the results of an applicable EPA reference method obtained over the same sampling time.

"Averaging Period" means that period of time over which a pollutant or opacity is averaged to demonstrate compliance to an emission limitation or standard.

"Block Averages" means the total time expressed in fractions of hours over which emission data is collected and averaged.

"Calibration Drift" (zero drift and span drift) means the value obtained by subtracting the known standard or reference value from the raw response of the continuous monitoring system.

"Channel" means the pollutant, diluent, or opacity to be monitored.

"CMS Information" means the identifying information for each continuous monitoring system a source is required to install.

"Computer Enhancement" means computerized correction of a monitor's zero drift and span drift to reflect actual emission concentrations and opacity.

"Continuous Emission Monitoring System" (CEMS) means all equipment required to determine gaseous emission rates and to record the resulting data.

"Continuous Monitoring System" (CMS) means all equipment required to determine gaseous emission rates or opacity and to record the data.

"Continuous Opacity Monitoring System" means all equipment required to determine opacity and data recording.

"Cylinder Gas Audit" means an alternative relative accuracy test of a continuous emission monitoring system to determine its precision using gases certified by or traceable to National Institute of Standards and Technology (NIST) in the ranges specified in 40 CFR 60, Appendix F.

"Description Report" means a short but accurate description of events that caused continuous monitoring system irregularities or excess emissions that occurred during the reporting period submitted in the state electronic data report.

"Excess Emission Report" means a report within the state electronic data report that documents the date, time, and magnitude of each excess emission episode occurring during the reporting period.

"Excess Emissions" means the amount by which recorded emissions exceed those allowed by approval orders, operating permits, the state implementation plan, or any other provision of R307.

"Monitor" means the equipment in a continuous monitoring system that analyzes concentration or opacity and generates an electronic signal that is sent to a recording device.

"Monitor Availability" means any period in which both the source of emissions and the continuous monitoring system are operating and the minimum frequency of data capture occurred as required in 40 CFR 60.13.

"Monitor Unavailability" means any period in which the source of emissions is operating and the continuous monitoring system is:

a. not operating or minimum data capture did not occur,

b. not generating data, not recording data, or data is lost, or

c. out-of-control in the case of a continuous emissions monitor used for continuous compliance purposes.

"New Source Performance Standards" (NSPS) means 40 CFR 60, Standards of Performance for New Stationary Sources, incorporated by reference at R307-210.

"Operations Report" means the report of all information required under 40 CFR 60 for utilities and fossil fuel fired boilers.

"Performance Specification" means the operational tolerances for a continuous monitoring system as outlined in 40 CFR 60, Appendix B.

"Precision" means the difference between a continuous monitoring system response and the known concentration of a calibration gas or neutral density filter.

"Quality Assurance Calibrations" means calibrations, drift adjustments, and preventive maintenance activities on a continuous monitoring system.

"Raw Continuous Monitoring System Response" means a continuous monitoring system's uncorrected response used to determine calibration drift.

"Relative Accuracy Audit" means an alternative relative accuracy test procedure outlined in 40 CFR 60, Appendix F, which is used to correlate continuous emission monitoring system data to simultaneously collected reference method test data, as outlined in 40 CFR Part 60, Appendix A, using no fewer than three reference method test runs.

"Relative Accuracy Test Audit" means the primary method of determining the correlation of continuous emissions monitoring system data to simultaneously collected reference method test data, using no fewer than nine reference method test runs conducted as outlined in 40 CFR 60, Appendix A.

"State Electronic Data Report" (SEDR) means the sum total of a source's monitoring activities that occurred during a reporting period.

"Summary Report" means the summary of all monitor and excess emission information that occurred during a reporting period.

"Tamper" means knowingly:

a. to make a false statement, representation, or certification in any application, report, record, plan, or other document filed or required to be maintained under R307-170, or

b. to render inaccurate any continuous monitoring system or device or any method required to maintain the accuracy of the continuous monitoring system or device.

"Valid Monitoring Data" means data collected by an accurately functioning continuous monitoring system while any

installation monitored by the continuous monitoring system is in operation.

R307-170-5. General Requirements.

(1) Each source required to operate a continuous monitoring system is subject to the requirements of 40 CFR 60.13 (d) through (j), except as follows:

(a) When minimum emission data points are collected by the continuous monitoring system as required in 40 CFR 60.13 or applicable subparts, quality assurance calibration and maintenance activities shall not count against monitor availability.

(b) A monitor's unavailability due to calibration checks, zero and span checks, or adjustments required in 40 CFR 60.13 or R307-170 will not be considered a violation of R307-170.

(c) Monitor unavailability due to continuous monitoring system breakdowns will not be considered a monitor unavailability violation provided that the owner or operator demonstrates that the malfunction was unavoidable and was repaired expeditiously.

(d) To supplement continuous monitor data, a source with minimum continuous monitoring system data collection requirements may conduct applicable reference method tests outlined in 40 CFR 60, Appendix A, or as directed in the source's applicable Subpart of the New Source Performance Standards.

(2) Each source shall monitor and record all emissions data during all phases of source operations, including start-ups, shutdowns, and process malfunctions.

(3) Each source operating a continuous emissions monitoring system for compliance determination shall document each out-of-control period in the state electronic data report.

(4) Each continuous monitoring system subject to R307-170 shall be installed, operated, maintained, and calibrated in accordance with applicable performance specifications found in 40 CFR 60 Appendix B and Appendix F.

(5) Each continuous emissions monitoring system shall be configured so that calibration gas can be introduced at or as near to the probe inlet as possible. Each source shall conduct daily calibration zero drift and span drift checks and cylinder gas audits by flowing calibration gases at the probe inlet, or as near to the probe inlet as possible. Daily calibration drift checks and quarterly cylinder gas audit data shall be recorded by the continuous emissions monitoring system electronically to a strip chart recorder, data logger, or data recording devices.

(6) No person shall tamper with a continuous monitoring system.

(7) Any source that constructs two or more emission point sources that may interfere with visible emissions observations shall install a continuous opacity monitor to show compliance with visible emission limitations on each obstructed stack, duct or vent that has a visible emission limitation.

R307-170-6. Minimum Monitoring Requirements for Specific Sources.

(1) Fossil Fuel Fired Steam Generators.

(a) A continuous monitoring system for the measurement of opacity shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour for each boiler except where:

(i) natural gas or oil or a mixture of natural gas and oil is the only fuel burned,

(ii) the source is able to comply with the applicable particulate matter and opacity regulations without using particulate matter collection equipment, and

(iii) the source has never been found through any administrative or judicial proceeding to be in violation of any visible emission standard or requirements.

(b) A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour heat input which has installed sulfur dioxide pollution control equipment.

(c) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated on fossil fuel fired steam generators of greater than 1000 million BTU per hour heat input when such facility is located in an Air Quality Control Region where the director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standards, unless the source owner or operator demonstrates during source compliance tests as required by the director that such a source emits nitrogen oxides at levels 30 percent or more below the emission standard.

(d) A continuous monitoring system for the measurement of percent oxygen or carbon dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(2) Nitric Acid Plants.

Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100 percent acid, and located in an Air Quality Control Region where the director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standard, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of nitrogen oxides for each nitric acid producing installation.

(3) Sulfuric Acid Plants - Burning and Production.

Each sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of sulfur dioxide for each sulfuric acid producing installation within such plant.

(4) Petroleum Refineries - Fluid Bed Catalytic Cracking Unit Catalyst Regenerator.

Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity.

R307-170-7. Performance Specification Audits.

(1) Quarterly Audits.

Unless otherwise stipulated for sources subject to the Acid Rain Provisions of the Clean Air Act in 40 CFR Part 75 CEM, Appendix A, Section 6.2, effective as of the date referenced in R307-101-3, each continuous emissions monitoring system shall be audited at least once each calendar quarter. Successive quarterly audits shall be conducted at least two months apart. A relative accuracy test audit shall be conducted at least once every four calendar quarters as described in the applicable performance specification of 40 CFR 60, Appendix B.

(a) Relative accuracy shall be determined in units of the applicable emission limit.

(b) An alternative relative accuracy test (cylinder gas audit or relative accuracy audit) may be conducted in three of the four calendar quarters in place of conducting a relative accuracy test audit, but in no more than three quarters in succession.

(c) Each range of a dual range monitor shall be audited using an alternative relative accuracy audit procedure.

(d) Minor deviations from the reference method test must be submitted to the director for approval.

(e) Performance specification tests and audits shall be conducted so that the entire continuous monitoring system is concurrently tested.

(2) Notification.

The source shall notify the director of its intention to conduct a relative accuracy test audit by submitting a pretest protocol or by scheduling a pretest conference if directed to do so by the director. Each source shall notify the director no less than 45 days prior to testing.

(3) Audit Procedure.

A source may stop a relative accuracy test audit before the commencement of the fourth run to perform repairs or adjustments on the continuous emissions monitoring system. If the audit is stopped to make repairs or adjustments, the audit must be started again from the beginning. If the fourth test run is started, testing shall be conducted until the completion of the ninth acceptable test run or the source may declare the monitor out-of-control and stop the test. If the system does not meet its applicable relative accuracy performance specification outlined in 40 CFR 60, Appendix B, its data may not be used in determining emissions rates until the system is successfully recertified.

(4) Performance Specification Tests.

(a) Except as listed in (b) below, all reference method testing equipment shall be totally independent of the continuous emissions monitoring system equipment undergoing a performance specification test.

(b) Reference method tests conducted on fuel gas lines, vapor recovery units, or other equipment as approved by the director may use a common probe, when the reference method sample line ties into the continuous emission monitor's probe or sample line as close to the probe inlet as possible.

(5) Submittal of Audit Results.

The source shall submit all relative accuracy performance specification test reports to the director no later than 60 days after completion of the test.

(a) Test reports shall include all raw reference method calibration data, raw reference method emission data with date and time stamps, and raw source continuous monitoring data with date and time stamps. All data shall be reported in concentration and units of the applicable emission limit.

(b) Relative accuracy performance specification test or audit reports shall include the company name, plant manager's name, mailing address, phone number, environmental contact's name, the monitor manufacturer, the model and serial number, the monitor range, and its location.

(6) Daily Drift Test.

Each source operating a continuous monitoring system shall conduct a daily zero and span calibration drift test as required in 40 CFR 60.13(d). The zero and span drifts shall be determined by using raw continuous monitoring system responses to a known value of the reference standard. Computer enhancements may be used to correct continuous monitoring system emission data that has been altered by monitor drift, but may not be used to determine daily zero and span drift.

(a) A monitor used for compliance that fails the daily calibration drift test as outlined in 40 CFR 60 Appendix F, Subpart 4, shall be declared out-of-control, and the out-of-control period shall be documented in the state electronic data report. The source shall make corrective adjustments to the system promptly. Continuous emission monitoring system data collected during the out-of-control period may not be used for monitor availability.

(b) Each source operating a continuous monitoring system that exceeds the calibration drift limit as outlined in 40 CFR 60 and the applicable performance specification shall make corrective adjustments promptly.

R307-170-8. Recordkeeping.

Each source subject to this rule shall maintain a file of all:

(1) parameters for each continuous monitoring system and monitoring device,

(2) performance test measurements,

(3) continuous monitoring system performance evaluations,

(4) continuous monitoring system or monitoring device calibration checks,

(5) adjustments and maintenance conducted on these systems or devices, and

(6) all other information required by this rule. Information shall be recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, and shall be available to the director at any time.

R307-170-9. State Electronic Data Report.

(1) General Reporting Requirements.

(a) Each source required to install a continuous monitoring system shall submit the state electronic data report including all information specified in (2) through (10) below. Each source shall submit a complete, unmodified report in an electronic ASCII format specified by the director.

(b) Partial Reports.

(i) If the total duration of excess emissions during the reporting period is less than one percent of the total operating time and the continuous monitoring system downtime is less than five percent of the total operating time, only the summary portion of the state electronic data report need be submitted.

(ii) If the total excess emission during the reporting period is equal to or greater than one percent of the total operating time, or the total monitored downtime is equal to or greater than five percent of the total operating time, the total state electronic data report shall be submitted.

(iii) Each source required to install a continuous monitoring system for the sole purpose of generating emissions inventory data is not required to submit the excess emission report required by (7) below or the excess emission summary required by (6)(b) below, unless otherwise directed by the director.

(c) Frequency of Reporting. Each source subject to this rule shall submit a report to the director with the following frequency:

(i) Each source shall submit a report quarterly, if required by the director or by 40 CFR Part 60, or if the continuous monitoring system data is used for compliance determination. Each source submitting quarterly reports shall submit them by January 30, April 30, July 30, and October 30 for the quarter ending 30 days earlier.

(ii) Any source subject to this rule and not required to submit a quarterly report shall submit its report semiannually by January 30 and July 30 for the six month period ending 30 days earlier.

(iii) The director may require any source to submit all emission data generated on a quarterly basis.

(2) Source Information.

The report shall contain source information including the company name, name of manager or responsible official, mailing address, AIRS number, phone number, environmental contact name, each source required to install a monitoring system, quarter or quarters covered by the report, year, and the operating time for each source.

(3) Continuous Monitoring System Information.

The report shall identify each channel, manufacturer, model number, serial number, monitor span, installation dates, and whether the monitor is located in the stack or duct.

(4) Monitor Availability Reporting.

(a) The report shall include all periods that the pollutant concentration exceeded the span of the continuous monitoring system by source, channel, start date and time, and end date and time.

(b) Each continuous monitoring system outage or

malfunction which occurs during source operation shall be reported by source, channel, start date and time, and end date and time.

(c) When it becomes necessary to supplement continuous monitoring data to meet the minimum data requirements, the source shall use applicable reference methods and procedures as outlined in 40 CFR 60, or as stipulated in the source's applicable Subpart of the New Source Performance Standards. Supplemental data shall be reported by source, channel, start date and time, and end date and time, and may be used to offset monitor unavailability.

(d) Monitor modifications shall be reported by source, channel, date of modification, whether a support document was submitted, and the reason for the modification.

(5) Continuous Monitoring System Performance Specification Audits.

(a) Each source shall submit the results of each relative accuracy test audit, relative accuracy audit and cylinder gas audit. Each source that reports linearity tests may omit reporting cylinder gas audits.

(b) Each relative accuracy test audit shall be reported by source, channel, date of the most current relative accuracy test audit, date of the preceding relative accuracy test audit, number of months between relative accuracy test audits, units of applicable standard, average continuous emissions monitor response during testing, average reference method value, relative accuracy, and whether the continuous emissions monitor passed or failed the test or audit.

(c) A relative accuracy audit shall be reported by source, channel, date of audit, continuous emissions monitor response, relative accuracy audit response, percent precision, pass or fail results, and whether the monitor range is high or low.

(d) Cylinder gas audit and linearity tests shall be reported by source, channel, date, audit point number, cylinder identification, cylinder expiration date, type of certification, units of measurement, continuous emissions monitor response, cylinder concentration, percent precision, pass or fail results, and whether the monitor range is high or low.

(6) Summary reports.

(a) Each source shall summarize and report each continuous monitoring system outage that occurred during the reporting period in the continuous monitoring system performance summary report. The summary must include the source, channels, monitor downtime as a percent of the total source operating hours, total monitor downtime, hours of monitor malfunction, hours of non-monitor malfunction, hours of quality assurance calibrations, and hours of other known and unknown causes of monitor downtime. A source operating a backup continuous monitoring system must account for monitor unavailability only when accurate emission data are not being collected by either continuous monitoring system.

(b) The summary report shall contain a summary of excess emissions that occurred during the reporting period unless the continuous monitoring system was installed to document compliance with an emission cap or to generate data for annual emissions inventories.

(i) Each source with multiple emission limitations per channel being monitored shall summarize excess emissions for each emission limitation.

(ii) The emission summary must include the source, channels, total hours of excess emissions as a percent of the total source operating hours, hours of start-up and shutdown, hours of control equipments problems, hours of process problems, hours of other known and unknown causes, emission limitation, units of measurement, and emission limitation averaging period.

(c) When no continuous monitoring unavailability or excess emissions have occurred, this shall be documented by placing a zero under each appropriate heading.

(7) Excess Emissions Report.

(a) The magnitude and duration of all excess emissions shall be reported on an hourly basis in the excess emissions report.

(i) The duration of excess emissions based on block averages shall be reported in terms of hours over which the emissions were averaged. Each source that averages opacity shall average it over a six-minute block and shall report the duration of excess opacity in tenths of an hour. Sources using a rolling average shall report the duration of excess emissions in terms of the number of hours being rolled into the averaging period.

(ii) Sources with multiple emission limitations per channel being monitored shall report the magnitude of excess emissions for each emission limitation.

(b) Each period of excess emissions that occurs shall be reported. Each episode of excess emission shall be accompanied with a reason code and action code that links the excess emission to a specific description, which describes the events of the episode.

(8) Operations Report.

Each source operating fossil fuel fired steam generators subject to 40 CFR 60, Standards of Performance for New Stationary Sources, shall submit an operations report.

(9) Signed Statement.

(a) Each source shall submit a signed statement acknowledging under penalties of law that all information contained in the report is truthful and accurate, and is a complete record of all monitoring related events that occurred during the reporting period. In addition, each source with an operating permit issued under R307-415 shall submit the signed statement required in R307-415-5d.

(10) Descriptions.

Each source shall submit a narrative description explaining each event of monitor unavailability or excess emissions. Each description also shall be accompanied with reason codes and action codes that will link descriptions to events reported in the monitoring information and excess emission report.

KEY: air pollution, monitoring, continuous monitoring

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	19-2-115(3)(b)
	40 CFR 60

R307. Environmental Quality, Air Quality.
R307-201. Emission Standards: General Emission Standards.
R307-201-1. Purpose.

R307-201 establishes emission standards for all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-2. Applicability.

R307-201 applies statewide to any sources of emissions except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-3. Visible Emissions Standards.

(1) Visible emissions from installations constructed on or before April 25, 1971, except diesel engines, shall be of a shade or density no darker than 40% opacity, except as otherwise provided in these rules.

(2) Visible emissions from installations constructed after April 25, 1971, except diesel engines shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these rules.

(3) Visible emissions for all incinerators, no matter when constructed, shall be of shade or density no darker than 20% opacity.

(4) No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit visible emissions.

(5) Emissions from diesel engines, except locomotives, manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(6) Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(7) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

(8) Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

(9) Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

R307-201-4. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered or principally operated in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

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September 2, 2005 19-2-101
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R307. Environmental Quality, Air Quality.
R307-203. Emission Standards: Sulfur Content of Fuels.
R307-203-1. Commercial and Industrial Sources.

(1) Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

(a) In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: weight percent sulfur, gross heating value (btu per unit volume), and density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

(b) In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

(c) All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with (a) and (b) above.

(d) Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the director upon request, and shall include a period of two years ending with the date of the request.

(e) If the owner/operator of the source can demonstrate to the director that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

(f) Any person may apply to the director for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-203, or that the alternative test method is equivalent to that required by R307-203. The director shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

(2) Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of (1) above. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of (1) above. Control apparatus to continuously prevent the emission of sulfur greater than provided by (1) above must be specified in the application for an exemption.

(3) In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the director. The operator shall provide the director with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with (1) above. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from (1) above are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

(4) Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

(a) For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

(b) For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

(c) For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

R307-203-2. Sulfur and Ash Content of Coal for Residential Use.

(1) After July 1, 1987, no person shall sell, distribute, use or make available for use any coal or coal containing fuel for direct space heating in residential solid fuel burning devices and fireplaces which exceeds the following limitations as measured by the American Society for Testing Materials Methods:

(a) 1.0 pound sulfur per million BTU's, and

(b) 12% volatile ash content.

(2) Any person selling coal or coal containing fuel used for direct residential space heating within the State of Utah shall provide written documentation to the coal consumer of the sulfur and volatile ash content of the coal being purchased.

R307-203-3. 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, fuel composition*, fuel oil*
September 15, 1998 19-2-104
Notice of Continuation March 4, 2010

R307. Environmental Quality, Air Quality.
R307-204. Emission Standards: Smoke Management.
R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health and visibility of prescribed fire and wildland fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire use event that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least the next five years.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities. Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific prestated resource management objectives in predefined geographic areas.

"Wildland Fire Implementation Plan(WFIP)" means the plan required for each fire that is allowed to burn.

"WFIP Stage I" means the initial wildland fire strategy planning document. It is developed for fires less than 20 acres, with a low potential of spread and negative impacts. It must be completed within 8-hrs. of start.

"WFIP Stage II" means a more detailed wildland fire strategy planning document. It is developed for fires greater than 20 acres that are more active fires with a greater potential for geographic extent. It must be completed within 24-hrs. of start.

R307-204-4. General Requirements.

(1) Management of On-Going Fires. If, after consultation with the land manager, the director determines that a prescribed fire, wildland fire use event, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the director.

(3) Non-burning Alternatives to Fire. Beginning in 2004 and annually thereafter, each land manager shall submit to the director by March 15 a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(4) Annual Emissions Goal. The director shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

(5) Long-term Fire Projections. Each land manager shall provide to the director by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the director on forms provided by the Division of Air Quality, and shall include the following information for all prescribed fires including those smaller than 20 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, ignition method, and planned use of emission reduction techniques to support establishment of the annual emissions goal;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires (de minimis).

(1) A prescribed fire that covers less than 20 acres per burn shall be ignited only when the clearing index is 500 or greater.

(2) A prescribed fire that covers less than 20 acres per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.

(a) The prescribed fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the director by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

R307-204-7. Small Prescribed Pile Fires (de minimis).

(1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.

(2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.

(a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the director by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

R307-204-8. Large Prescribed Fires.

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit to the director a burn plan, including a fire prescription.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit pre-burn information to the director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the director on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the director a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the director approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the director before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed burn, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the director a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the director for six months following the end of the fire.

R307-204-9. Large Prescribed Pile Fires.

(1) Burn Plan. For a prescribed pile fire that exceeds

30,000 cubic feet per day, the land manager shall submit to the director a burn plan, including a fire prescription.

(2) Pre-Burn Information. For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the director on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the director a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed pile fire requiring a burn plan shall be ignited before the director approves the burn request.

(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the director before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the director a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the director for six months following the end of the fire.

R307-204-10. Requirements for Wildland Fire Use Events.

(1) Burn Approval Required.

(a) The land manager shall notify the director of any potential wildland fire use (WFU) event having a WFIP Stage I. The following information will be provided:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day;

(vi) Wilderness or Resource Natural Area designation, if applicable;

(vii) Distance to nearest community;

(viii) Elevation of fire; and

(ix) Fire's airshed number.

(b) The Land Managers shall notify the director of any potential wildland fire use event covering more than 20 acres or having a WFIP Stage II due to higher potential for spread and negative impacts. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the director as it is being developed:

(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;

(ii) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the director.

(c) The director's approval of the smoke management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.

(2) Daily Emission Report for wildland fire use event. By 0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the director the daily emission report on the form provided by the Division of Air Quality, including the following information:

(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;
(b) UTM coordinate;
(c) Dates and times of the start and end of the burn;
(d) Black acres by wildland fuel type;
(e) Estimated proportion of wildland fuel consumed by wildland fuel type;
(f) Proportion of moisture in the wildland fuel by size class;
(g) Emission estimates;
(h) Level of public interest or concern regarding smoke; and
(i) Conformance to the wildland fire implementation plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the director for six months following the end of the fire.

KEY: air quality, wildland fire, smoke, land manager
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R307. Environmental Quality, Air Quality.
R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust.
R307-205-1. Purpose.

R307-205 establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust for sources located in all areas in the state except those listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-2. Applicability.

R307-205 applies statewide to all sources of fugitive emissions and fugitive dust, except for agricultural or horticultural activities specified in 19-2-114(1)-(3) and any source listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-3. Definitions.

The following definition applies throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter that may create fugitive dust.

R307-205-4. Fugitive Emissions.

Fugitive emissions from sources which were constructed on or before April 25, 1971, shall not exceed 40% opacity. Fugitive emissions from sources constructed or modified after April 25, 1971, shall not exceed 20% opacity.

R307-205-5. Fugitive Dust.

(1) Storage and Handling of Materials. Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall minimize fugitive dust from such an operation. Such control may include the use of enclosures, covers, stabilization or other equivalent methods or techniques as approved by the director.

(2) Construction and Demolition Activities.

(a) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization of potential fugitive dust sources or other equivalent methods or techniques approved by the director.

(b) The owner or operator of any land area greater than one-quarter acre in size that has been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne. Such measures may include:

(i) planting vegetative cover,
(ii) providing synthetic cover,
(iii) watering,
(iv) chemical stabilization,
(v) wind breaks, or
(vi) other equivalent methods or techniques approved by the director.

(c) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization or other equivalent methods or techniques approved by the director.

R307-205-6. Roads.

(1) The director may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same, to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

(2) Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-205-7. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-205-7 and not by R307-205-5 and 6.

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used may include:

(a) periodic watering of unpaved roads,
(b) chemical stabilization of unpaved roads,
(c) paving of roads,
(d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,
(e) restricting the speed of vehicles in and around the mining operation,
(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,
(g) restricting the travel of vehicles on other than established roads,
(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage,
(i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,
(j) minimizing the area of disturbed land,
(k) prompt revegetation of regraded lands,
(l) planting of special windbreak vegetation at critical points in the permit area,
(m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director,
(n) restricting the areas to be blasted at any one time,
(o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,
(p) restricting fugitive dust at spoil and coal transfer and loading points,
(q) control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the director, or
(r) other techniques as determined necessary by the director.

R307-205-8. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-205-8 and not by R307-205-5 and 6.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include:

(a) watering,
(b) chemical stabilization,
(c) synthetic covers,
(d) vegetative covers,
(e) wind breaks,
(f) minimizing the area of disturbed tailings,
(g) restricting the speed of vehicles in and around the tailings operation, or
(h) other equivalent methods or techniques which may be approvable by the director.

KEY: air pollution, fugitive emissions, mining, tailings
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19-2-109

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2011, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "director" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
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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 director.

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 director, 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 Semichemical 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 YYYY, 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 WWWWW, 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 ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(100) 40 CFR Part 63 Subpart BBBBBB 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 CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(102) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(103) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(104) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(106) 40 CFR Part 63, Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(107) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(108) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(109) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(110) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(111) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(112) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(113) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(114) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(117) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(118) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(119) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(120) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(121) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(122) 40 CFR Part 63, Subpart BBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(123) 40 CFR Part 63, Subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(124) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(125) 40 CFR Part 63, Subpart EEEEEEE, 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.
R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills.
R307-221-1. Purpose and Applicability.

(1) To meet the requirements of 42 U.S.C. 7411(d) and 40 CFR 60.30c through 60.36c, and to meet the requirements of the plan for Municipal Solid Waste Landfills, incorporated by reference at R307-220-2, R307-221 regulates emissions from existing municipal solid waste landfills.

(2) R307-221 applies to each existing municipal solid waste landfill for which construction, reconstruction or modification was commenced before May 30, 1991. Municipal solid waste landfills which closed prior to November 8, 1987, are not subject to R307-221. Physical or operational changes made solely to comply with the plan for Municipal Solid Waste Landfills are not considered a modification or reconstruction and do not subject the landfill to the requirements of 40 CFR 60 Subpart WWW.

(3) Municipal solid waste landfills with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) are subject to the emission inventory requirements of R307-150.

R307-221-2. Definitions and References.

Definitions found in 40 CFR Part 60.751, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the exclusion of the definitions of closed landfill, design capacity, and NMOC. The following additional definitions apply to R307-221:

"Closed Landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed. A landfill is considered closed after meeting the criteria specified in Subsection R315-301-2(13).

"Design Capacity" means the maximum amount of solid waste a landfill can accept, as specified in an operating permit issued under R307-415 or a solid waste permit issued under Rule R315-310.

"Modification" means an increase in the landfill design capacity through a physical or operational change, as reported in the initial Design Capacity Report.

"NMOC" means nonmethane organic compounds.

R307-221-3. Emission Restrictions.

(1) The requirements found in 40 CFR 60.752 through 60.759, including Appendix A, effective as of date referenced in R307-101-3, are adopted and incorporated by reference, with the following exceptions and the substitutions listed in R307-221-3(2) through (5):

(a) Substitute "director" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State, local or Tribal agency."

(c) Substitute "R307-221" for all references to "This subpart" or "this part."

(d) Substitute "40 CFR" for all references to "This title."

(e) Substitute "Title 19, Chapter 6" for all references to "RCRA" or the "Resource Conservation and Recovery Act," 42 U.S.C. 6921, et seq.

(f) Substitute "Rules R315-301 through 320" for all references to 40 CFR 258.

(2) Instead of 40 CFR 60.757(a)(1),substitute the following: The initial design capacity report must be submitted within 90 days after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(3) Instead of 40 CFR 60.757(a)(3), substitute the following: An amended design capacity report shall be submitted to the director providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report shall be submitted within 90 days of the earliest of the following events:

(a) the issuance of an amended operating permit;

(b) submittal of application for a solid waste permit under R315-310; or

(c) the change in operating procedures which will result in an increase in design capacity.

(4) Instead of 40 CFR 60.757(b)(1)(i), substitute the following: The initial emission rate report for nonmethane organic compounds must be submitted within 90 days after EPA approval of the state plan incorporated by reference under R307-220-2.

(5) Instead of 40 CFR 60.752(b)(2)(ii)(B)(2), substitute the following: The liner shall be installed with liners on the bottom and all sides in all areas in which gas is to be collected, or as approved by the director. The liner shall meet the requirements of Subsection R315-303-3(3).

R307-221-4. Control Device Specifications.

Control devices meeting the following requirements, shall be used to control collected municipal solid waste landfill emissions:

(1) an open flare designed and operated in accordance with the parameters established in Section 40 CFR Part 60.18, effective as of date referenced in R307-101-3, which is adopted and incorporated by reference into this rule; or

(2) a control system designed and operated to reduce nonmethane organic compounds by 98 weight percent; or

(3) an enclosed combustor designed and operated to reduce the outlet nonmethane organic compounds concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

R307-221-5. Compliance Schedule.

(1) Except as provided in (2) below, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the emission standards established under R307-221-3(1) shall be accomplished within 30 months after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(2) For each existing municipal solid waste landfill meeting the conditions in R307-221-1(2) whose emission rate for nonmethane organic compounds is less than 50 megagrams (55 tons) per year on the date EPA approves the state plan incorporated by reference under R307-220-2, installation of collection and control systems capable of meeting emissions standards in R307-221-1(2) shall be accomplished within 30 months of the date when the landfill has an emission rate of nonmethane organic compounds of 50 megagrams (55 tons) per year or more.

(3) The owner or operator of each landfill with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) shall submit by April 1, 1997, an inventory of nonmethane organic compounds. The calculations for this inventory shall use emission factors which obtain the most accurate representation of emissions from the landfill.

(4) The owner or operator of a landfill requiring controls shall notify the director of the awarding of contracts for the construction of the collection and control system or the order to purchase components for the system. This notification shall be submitted within 18 months after reporting a nonmethane organic compound emission equal to or greater than 50 megagrams (55 tons) per year.

(5) The owner or operator shall notify the director of the initiation of construction or installation of the collection and

control system. This notification shall be submitted to the director within 22 months after reporting a nonmethane organic compound emission rate equal to or greater than 50 megagrams (55 tons) per year. Landfills with commingled asbestos and municipal solid waste may include the submittals required under R307-214-1 with this notice.

KEY: air pollution, municipal landfills
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste.
R307-222-1. Purpose and Applicability.

(1) R307-222 regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of them. The purpose of R307-222 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans from incinerators burning hospital, medical or infectious waste. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, Subpart Ce, published at 62 FR 48348, September 15, 1997, 40 CFR Part 60, Subpart Ce as amended on October 6, 2009, and by the Plan for Incinerators for Hospital, Medical, and Infectious Waste which is incorporated by reference at R307-220-3.

(2) Except as set forth in R307-222-1(2)(a) through R307-222-1(2)(g), R307-222 applies to each incinerator for hospital, medical, or infectious waste or any combination of them for which construction commenced on or before June 20, 1996; for which modification was commenced on or before March 16, 1998; for which construction was commenced after June 20, 1996 but no later than December 1, 2008; or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

(a) A combustor is not subject to R307-222 during periods when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them as defined in 40 CFR 60.51c is burned, provided the owner or operator of the combustor:

(i) Notifies the director of an exemption claim; and

(ii) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned.

(b) Any co-fired combustor as defined in 40 CFR 60.51c is not subject to this subpart if the owner or operator of the co-fired combustor:

(i) Notifies the director of an exemption claim;

(ii) Provides an estimate of the relative weight of wastes to be combusted, including hospital, medical or infectious waste or any combination of them, and other fuels and wastes; and

(iii) Keeps records on a calendar quarter basis of the weight of hospital, medical, or infectious waste or any combination of them which was combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under R315-306 is not subject to R307-222.

(d) Any combustor which meets the applicability requirements under Subpart Cb, Ea, or Eb of 40 CFR Part 60 is not subject to R307-222.

(e) Any pyrolysis unit as defined in 40 CFR 60.51c is not subject to R307-222.

(f) Any cement kiln firing hospital, medical, or infectious waste or any combination of them is not subject to R307-223.

(g) Physical or operational changes made to an existing hospital, medical or infectious waste incinerator unit solely for the purpose of complying with emission guidelines under R307-222 are not considered a modification and do not result in an existing hospital, medical or infectious or any combination waste incinerator unit becoming subject to the provisions of R307-210.

(3) Beginning September 15, 2000, any facility subject to R307-222 is also required to obtain an operating permit under R307-415.

R307-222-2. Definitions and References.

(1) The following definitions apply only to R307-222. Definitions found in 40 CFR 60.31e, effective as of the date referenced in R307-101-3, and 40 CFR 60.51c, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "director" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State agency" or "State regulatory agency."

(c) Substitute "Rule R307-222" for all references to "this subpart."

(d) Substitute "40 CFR Part 60" for all references to "this part."

(e) Substitute "40 CFR" for all references to "This title."

R307-222-3. All Incinerators.

Each incinerator subject to R307-222 must comply with the requirements of 40 CFR 60.52c(b) for emission limits, 40 CFR 60.53c for operator training and qualification, 40 CFR 60.54c for siting requirements, 40 CFR 60.55c for a waste management plan, 40 CFR 56c for compliance and performance testing, 40 CFR 60.57c for monitoring requirements, and 40 CFR 60.58c(b) excluding (b)(2)(ii) and (b)(7) for recordkeeping, and 40 CFR 60.58c(c) through (f) for reporting. These provisions, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-222-4. Large, Medium and Small Incinerators.

Except as provided in Section R307-222-5, each incinerator must comply with the emissions limitations of Table 1A and Table 1B in 40 CFR Part 60, Subpart Ce; 40 CFR 60.57c; and 40 CFR 60.56c, excluding 56c(b)(12) and 56c(c)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

R307-222-5. Small Rural Incinerators.

(1) A small rural incinerator is a small incinerator as defined in Section R307-222-2 that:

(a) is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area listed in OMB bulletin No. 93-17 entitled "Revised Statistical definitions for Metropolitan Areas," June 30, 1993; and

(b) burns less than 2000 pounds per week of hospital, medical or infectious waste or any combination of them. The 2000 pounds per week limitation does not apply during performance tests.

(2) Each small rural incinerator must comply with the emission limits of Table 2A and Table 2B in 40 CFR Part 60, Subpart Ce, effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(3) Each small rural incinerator must comply with the inspection requirements of 40 CFR 60.36e(a)(1) and (a)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference. An inspection meeting these requirements must be conducted within one year after federal approval of the Plan incorporated by reference in R307-220-3, and annually no more than 12 months following the previous annual inspection.

(4) Each small rural incinerator must comply with the compliance and performance testing requirements of 40 CFR 60.37e(b)(1) through (b)(5), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(5) Each small rural incinerator must comply with the monitoring requirements of 40 CFR 60.37e(d)(1) through (d)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(6) Each small rural incinerator must comply with the recordkeeping and reporting requirements of 40 CFR 60.38e(b)(1) and (b)(2), effective as of the date referenced in

R307-101-3, which are adopted and incorporated by reference.

KEY: air pollution, hospitals, medical incinerator, infectious waste
March 7, 2012 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units.
R307-223-1. Purpose and Applicability.

(1) R307-223 regulates emissions from existing small municipal waste combustion units. The purpose of R307-223 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and furans from small municipal waste combustion units. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, subpart BBBB, and by the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(2) R307-223 applies to each existing small municipal waste combustion unit that has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel and commenced construction on or before August 30, 1999. A list of facilities not subject to R307-223 is found in 40 CFR 60.1555(a) through (k), effective as of the date referenced in R307-101-3, which is hereby adopted and incorporated by reference.

(3) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4, then R307-210 does not apply to that unit. Such changes do not constitute modifications or reconstructions under R307-210.

(4) The owner or operator of any source subject to R307-223 also is required to submit an application for an operating permit under R307-415.

R307-223-2. Definitions and Equations.

(1) The following definitions apply only to R307-223. Definitions found in 40 CFR 60.1940, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "director" for all federal regulation references to "Administrator" or "EPA Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State," "State agency" or "State regulatory agency."

(c) "State plan" means the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(d) "You" means the owner or operator of a small municipal waste combustion unit.

(e) Substitute "Rule R307-223" for all references to "this subpart."

(f) Substitute "40 CFR Part 60" for all references to "this part."

(g) Substitute "40 CFR" for all references to "This title."

(2) Equations found in 40 CFR 60.1935, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-223-3. Requirements.

(1) Each incinerator owner or operator subject to R307-223 must comply with the requirements of 40 CFR 60.1540 and 60.1585 through 60.1905, and with the requirements and schedules set forth in Tables 2 through 8 that are found following 40 CFR 60.1940 for operator training and certification, operating requirements, emission limits, continuous emission monitoring, stack testing, other monitoring requirements, record keeping, and reporting. These provisions and table, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference with the exceptions listed below.

(a) In 40 CFR 60.1650(a), delete "or state."

(b) In 40 CFR 60.1675(a), delete "or a current provisional operator certification from your State certification program."

(c) In 40 CFR 1675 (c), change "three" to "two," and delete 40 CFR 1675(c)(3).

(2) Compliance dates. Each incinerator must be in compliance with the dates in Section III of the Plan.

KEY: air pollution, municipal waste incinerator, waste to energy plant
February 8, 2008 19-2-104
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-250. Western Backstop Sulfur Dioxide Trading Program.
R307-250-1. Purpose.

This rule implements the Western Backstop (WEB) Sulfur Dioxide Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309, and Section XX.E of the State Implementation Plan for Regional Haze, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under R307-110-28.

R307-250-2. Definitions.

The following additional definitions apply to R307-250:

"Account Certificate of Representation" or "Certificate" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account. "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

"Actual Emissions" means total annual sulfur dioxide emissions determined in accordance with R307-250-9 or determined in accordance with the Sulfur Dioxide Milestone Inventory requirements of R307-150 for sources that are not subject to R307-250-9.

"Allocate" means to assign allowances to a WEB source in accordance with SIP Section XX.E.3.a through c.

"Allowance" means the limited authorization under the WEB Trading Program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by R307-250.

"Allowance Limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source under R307-250-12 on the allowance transfer deadline for each control period.

"Allowance Transfer Deadline" means the deadline established in R307-250-10(2) when allowance transfers must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

"Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

"Compliance Certification" means a submission to the director by the Account Representative as required under R307-250-12(2) to report a WEB source's compliance or noncompliance with R307-250.

"Control Period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

"Existing Source" means a stationary source that commenced operation before the Program Trigger Date.

"General Account" means an account established in the WEB EATS under R307-250-8 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

"Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in SIP Section XX.E.1.

"New WEB Source" means a WEB source that commenced operation on or after the program trigger date.

"New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of SIP Section XX.E.3.c.

"Program trigger date" means the date that the director determines that the WEB Trading Program has been triggered in accordance with the provisions of SIP Section XX.E.1.c.

"Program trigger years" means the years shown in SIP Section XX.E.1.a, Table 3, column 3 for the applicable milestone if the WEB Trading Program is triggered as described in SIP Section XX.E.1.

"Retired source" means a WEB source that has received a retired source exemption as provided in R307-250-4(4).

"Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with R307-250-7(2).

"SIP Section XX.E" means Section XX, Part E of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program." SIP Section XX, Regional Haze, is incorporated by reference under R307-110-28.

"Special Reserve Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with R307-250-9(1)(b).

"Sulfur Dioxide emitting unit" means any equipment that is located at a WEB source and that emits sulfur dioxide.

"Submit" means sent to the director or the Tracking system Administrator under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

"Ton" means 2000 pounds and any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

"Tracking System Administrator" or "TSA" means the person designated by the director as the administrator of the WEB EATS.

"WEB Source" means a stationary source that meets the applicability requirements of R307-250-4.

"WEB Trading Program" means R307-250, the Western Backstop Trading Program, triggered as a backstop in accordance with the provisions in SIP Section XX.E, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

"WEB Emissions and Allowance Tracking System (WEB EATS)" means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with R307-250 are tracked to determine compliance with allowance limitations, and the system where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

"WEB EATS account" means an account in the WEB EATS established for purposes of recording, holding, transferring, and deducting allowances.

R307-250-3. WEB Trading Program Trigger.

(1) Except as provided in (2) below, R307-250 shall apply on the program trigger date that is established in accordance with the procedures in SIP Section XX.E.1.c.

(2) Special Penalty Provisions for the 2018 Milestone, R307-250-13, shall apply on January 1, 2018, and shall remain effective until the requirements of R307-250-13 have been met.

R307-250-4. WEB Trading Program Applicability.

(1) General Applicability. R307-250 applies to any

stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) and (b) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(b) All stationary sources that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is subject to R307-250 unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(b) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(2) The director may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a stationary source defined in (1)(b) above that has not previously met the applicability requirements of (1) is not subject to R307-250 if the stationary source had actual sulfur dioxide emissions of 100 tons or more in a single year and in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year, and:

(a)(i) the emissions increase was due to a temporary emission increase that was caused by a sudden, infrequent failure of air pollution control equipment, or process equipment, or a failure to operate in a normal or usual manner, and

(ii) the stationary source has corrected the failure of air pollution equipment, process equipment, or process by the time of the director's determination; or

(b) the stationary source had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in (4) below, once a stationary source is subject to R307-250, it will remain subject to the rule every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all sulfur dioxide emitting units at the source are permanently retired. The application shall contain the following information:

(i) identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the director;

(ii) name of account representative;

(iii) description of the status of the WEB source, including the date that the WEB source was permanently retired;

(iv) signed certification that the WEB source is permanently retired and will comply with the requirements of R307-250-4(4); and

(v) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the director notifies the WEB source that the retired source exemption has been granted.

(c) Responsibilities of Retired Sources.

(i) A retired source shall be exempt from R307-250-9 and R307-250-12, except as provided below.

(ii) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is issued.

(iii) A WEB source shall submit sulfur dioxide emissions reports, as required by R307-250-9, for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of R307-250-12, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(iv) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of this rule.

(d) Resumption of Operations.

(i) Before resuming operation, the retired source must submit registration materials as follows:

(A) If the source is required to obtain an approval order under R307-401 or an operating permit under R307-415 prior to resuming operation, then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted with the notice of intent under R307-401 or the operating permit application required under R307-415;

(B) If the source does not meet the criteria of (A), then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted to the director at least ninety days prior to resumption of operation.

(ii) The retired source exemption shall automatically expire on the day the retired source resumes operation.

(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the director for a retired source exemption within ninety days of the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the TSA.

R307-250-5. Account Representative for WEB Sources.

(1) Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(2) Identification and Certification of an account representative.

(a) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(b) The account representative shall submit to the director and the TSA a signed and dated certificate that contains the following elements:

(i) identification of the WEB source by plant name and an appropriate identification code in a format specified by the director;

(ii) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(iii) a list of owners and operators of the WEB source;

(iv) information to be part of the emission tracking system database that is established in accordance with SIP Section XX.E.3.i. The specific data elements shall be as specified by the the director to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(v) The following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that the owner and operator each shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the director regarding the WEB Trading Program."

(c) Upon receipt by the director of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Each owner and operator shall be bound by any decision or order issued by the director regarding the WEB Trading Program.

(d) No WEB EATS account shall be established for the WEB source until the TSA has received a complete Certificate. Once the account is established, all submissions concerning the account, including the deduction or transfer of allowances, shall be made by the account representative.

(3) Responsibilities.

(a) The responsibilities of the account representative include, but are not limited to, the transferring of allowances and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by R307-250, and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the alternate Account Representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the director and the TSA under R307-250-5(2). The change will be effective upon receipt of such certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

(b) Changes in Owner and Operator.

(i) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(ii) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the director as if the new owner or operator were included in the list.

R307-250-6. Registration.

(1) Deadlines.

(a) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the director no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the director no later than September 30 of the year following the inventory year in which the source exceeded the 100 tons sulfur dioxide emission threshold in R307-250-4(1)(b).

(c) Any new WEB source shall register by submitting the initial certificate required in R307-250-5(2) to the director prior to commencing operation.

(2) Any allocation, transfer or deduction of allowances to or from the source's compliance account shall not require a revision of the WEB source's operating permit under R307-415.

R307-250-7. Allowance Allocations.

(1) The TSA will record the allowances for each WEB source in the source's compliance account once the allowances are allocated by the director under SIP Section XX.E.3.a through c. If applicable, the TSA will record a portion of the sulfur dioxide allowances for a WEB source in a special reserve compliance account to account for any allowances to be held by the source that conducts monitoring in accordance with R307-250-9(1)(b).

(2) The TSA will assign a serial number to each allowance in accordance with SIP Section XX.E.3.f.

(3) All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of R307-250. No provision of the WEB Trading Program or other law should be construed to limit the authority of the director to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any non-utility WEB source that installs new control technology and that reduces its permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in SIP Section XX.E.3.a(1)(b)(i) or any utility that reduces its permitted annual sulfur dioxide emissions to a level that is below best available control technology may apply to the director for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2003 and the program trigger year. The application must be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced in this section for a minimum of five years after the early reduction bonus allowance is certified in accordance with SIP Section XX.E.3.a(1)(c). The application for an early reduction bonus allocation must contain the following information:

(a) copies of all approval orders, operating permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source qualifies for an early reduction credit. Approval orders, permits, or enforceable documents must contain monitoring requirements for sulfur dioxide emissions that meet the specifications in R307-250-9(1)(a).

(b) demonstration that the floor level established for the source in SIP Section XX.E.3.a(1)(b)(i) for non-utilities or best available control technology for utilities was calculated using data that are consistent with monitoring methods specified in R307-250-9(1)(a). If needed, the demonstration shall include a new floor level calculation that is consistent with the monitoring methodology in R307-250-9.

(6) Request for Allowances for New WEB Sources or Modified WEB Sources.

(a) A new WEB source may apply to the director for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. A new WEB source is eligible for an annual floor allocation equal to the lower of the permitted annual sulfur dioxide emission limit for that source, or sulfur dioxide annual emissions calculated based on a level of control equivalent to best available control technology (BACT) and assuming 100 percent utilization of the WEB source, beginning with the first full calendar year of operation.

(b) An existing WEB source that has increased production capacity through a new approval order issued under R307-401 may apply to the director for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. An existing WEB source is eligible for an annual allocation equal to:

(i) the permitted annual sulfur dioxide emission limit for a new unit; or

(ii) the permitted annual sulfur dioxide emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(c) A source that has received a retired source exemption under R307-250-4(4) is not eligible for an allocation from the new source set-aside.

(d) The application for an allocation from the new source set-aside must contain the following:

(i) for a new WEB source or a new unit under R307-250-7(6)(b)(i), documentation of the actual date of the commencement of operation and a copy of the approval order issued under R307-401;

(ii) for an existing WEB source under R307-250-7(6)(b)(ii), documentation of the production capacity of the source before and after the new permit.

R307-250-8. Establishment of Accounts.

(1) WEB EATS. All WEB sources are required to open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under R307-250-9(1)(b), the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. To open any type of account, an application that contains the following information must be submitted to the TSA:

(a) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative. For a compliance account, the application shall include a copy of the certificatefor the account representative and any alternate as required in R307-250-5(2)(b). For a general account, the application shall include the certificate for the account representative and any alternate as required in (3)(b) below.

(b) the WEB source or organization name;

(c) the type of account to be opened;

(d) identification of the specific units that are being monitored under R307-250-9(1)(b) and that must demonstrate compliance with the allowance limitation in the special reserve compliance account; and

(e) a signed certification of truth and accuracy by the account representative according to R307-250-5(3)(b) for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to (4) below.

(2) Account Representative for General Accounts. For a general account, one account representative must be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The account representative shall submit to the TSA a signed and dated certificate that contains the following elements:

(i) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(ii) the organization name, if applicable;

(iii) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions."

(c) Upon receipt by the TSA of the complete certificate, the account representative represents and, by his or her

representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the director.

(d) A WEB EATS general account shall not be established until the TSA has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) Changing the Account Representative for General Accounts. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the director and the TSA under (3)(b) above. The change will take effect upon the receipt of the certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under (1) above shall require a revision of the application.

R307-250-9. Monitoring, Recordkeeping and Reporting.

(1) General Requirements on Monitoring Methods.

(a) For each sulfur dioxide emitting unit at a WEB source the WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(i) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(ii) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, a unit shall use one of the following monitoring methods, as applicable:

(A) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(B) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of 40 CFR 75.19;

(C) one of the optional WEB protocols, if applicable, in Appendix B of State Implementation Plan Section XX, Regional Haze; or

(D) a petition for site-specific monitoring that the source submits for approval by the director and approval by the U.S. Environmental Protection Agency in accordance with R307-250-9(9).

(iii) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire control period and the account representative certifies in accordance with R307-250-12(2) that these conditions were met.

(b) Notwithstanding (a) above, a WEB source with a unit that meets one of the conditions of (i) below may submit a request to the director to have the provisions of this subsection (b) apply to that unit.

(i) Any of the following units may implement this subsection (b):

(A) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(B) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(C) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing.

(ii) For each unit covered by this subsection (b), the account representative shall submit a notice to request that this subsection (b) apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the deadlines specified in R307-250-9(6)(a), and shall include the following information (in a format specified by the director with such additional, related information as may be requested):

(A) a list of all units at the WEB source that identifies the units that are to be covered by this subsection (b);

(B) an identification of any such units that are permanently retired.

(iii) For each new unit at an existing WEB source for which the WEB source seeks to comply with this subsection (b) and for which the account representative applies for an allocation under the new source set-aside provisions of R307-250-7(6), the account representative shall submit a modified notice under (ii) above that includes such new sulfur dioxide emitting units. The modified request shall be submitted in accordance with the deadlines in R307-250-9(6)(a), but no later than the date on which a request is submitted under R307-250-7(6) for allocations from the set-aside.

(iv) The account representative for a WEB source shall submit an annual emissions statement for each unit under this subsection (b) pursuant to R307-250-9(8). The WEB source shall maintain operating records sufficient to estimate annual sulfur dioxide emissions in a manner consistent with the emission inventory submitted by the source for calendar year 2006. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account for the WEB source, the account representative shall report the extra amount as part of the annual report for the WEB source under R307-250-12 and shall obtain and transfer allowances into the special reserve compliance account to account for such emissions.

(v) R307-250-9(2) - (10) shall not apply to units covered by this paragraph except where otherwise noted.

(vi) A WEB source may opt to modify the monitoring for a sulfur dioxide emitting unit to use monitoring under (a) above, but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the account representative must submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with (2) below. The account representative shall also submit a revised notice under R307-250-9(1)(b)(ii) at the same time that the

initial monitoring plan is submitted.

(c) For any monitoring method that the WEB source uses under R307-250-9 including (b) above, the WEB source shall install, certify, and operate the equipment in accordance with this section, and record and report the data from the method as required in this section. In addition, the WEB source may not:

(i) except for an alternative approved by the EPA Administrator for a WEB source that implements monitoring under (a) above, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with (9) below;

(ii) operate a sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(iii) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(iv) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(A) during a period when the unit is exempt from the requirements of this Section, including retirement of a unit as addressed in (a)(iii) above;

(B) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this Section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(C) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this Section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this Section.

(2) Monitoring Plan.

(a) General Provisions. A WEB source with a sulfur dioxide emitting unit that uses a monitoring method under (1)(a)(ii) above shall meet the following requirements.

(i) Prepare and submit to the director an initial monitoring plan for each monitoring method that the WEB source uses to comply with this Section. In accordance with (c) below, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported. The plan shall be submitted in accordance with the deadlines specified in (6) below.

(ii) Prepare, maintain and submit to the director a detailed monitoring plan in accordance with the deadlines specified in (6) below. The plan will contain the applicable information required by (d) below. The director may require that the monitoring plan or portions of it be submitted electronically. The director may also require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under (8)(a) below or resubmitted separately within 30 days after any change is made to the plan in accordance with (iii) below.

(iii) Whenever a WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in (1)(a)(ii) above, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan, such as a change to serial number for a component of a monitoring system, then the WEB source shall update the monitoring plan.

(b) A WEB source with a sulfur dioxide emitting unit that uses a method under (1)(a)(i) above shall meet the requirements of this subsection (2) by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75. If requested, the WEB source also shall submit the entire monitoring plan to the director.

(c) Initial Monitoring Plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit or group of units sharing a common methodology that, except as otherwise specified in an applicable provision in Appendix B of State Implementation Plan Section XX, contains the following information:

(i) For all sulfur dioxide emitting units:

(A) plant name and location;

(B) plant and unit identification numbers assigned by the director;

(C) type of unit, or units for a group of units using a common monitoring methodology;

(D) identification of all stacks or pipes associated with the monitoring plan;

(E) types of fuels fired or sulfur containing process materials used in the sulfur dioxide emitting unit, and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(F) types of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(G) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(H) identification of all units using a common stack; and

(I) indicator of whether any stack identified in the plan is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a specific methodology submitted pursuant to (1)(a)(ii)(D) above, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(iii) If a WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this Section, such petition may be submitted as part of the initial monitoring plan.

(iv) The director may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this Section.

(d) Detailed Monitoring Plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in Appendix C of State Implementation Plan Section XX, the Regional Haze SIP, shall contain the following information:

(i) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a continuous emissions monitoring system (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in Appendix B of SIP Section XX, including:

(A) manufacturer, model number and serial number;

(B) component and system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer and/or probe;

(C) designation of the component type and method of sample acquisition or operation such as in situ pollutant

concentration monitor or thermal flow monitor;

(D) designation of the system as a primary or backup system;

(E) first and last dates the system reported data;

(F) status of the monitoring component; and

(G) parameter monitored.

(ii) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) hardware components that perform emission calculations or store data for quarterly reporting purposes, including the manufacturer and model number; and

(B) identification of the provider and model or version number of the software components.

(iii) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in 40 CFR Part 75.19(c) is not required to report such formulas.

(iv) For units with flow monitors only, the inside cross-sectional area in square feet at the flow monitoring location.

(v) If using CEMS for sulfur dioxide and flow, for each parameter monitored, include the scale, maximum potential concentration and method of calculation, maximum expected concentration, if applicable, and method of calculation, maximum potential flow rate and method of calculations, span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour for each unit or stack using sulfur dioxide or flow component monitors.

(vi) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(A) identification of the parameter;

(B) default, maximum, minimum, or constant value, and units of measure for the value;

(C) purpose of the value;

(D) indicator of use during controlled and uncontrolled hours;

(E) types of fuel;

(F) source of the value;

(G) value effective date and hour;

(H) date and hour value is no longer effective, if applicable; and

(I) for units using the excepted methodology under 40 CFR 75.19, the applicable sulfur dioxide emission factor.

(vii) Unless otherwise specified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which continuous emissions monitoring system hardware are installed:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour (lb/hr) of steam, or feet per second (ft/sec), as applicable;

(B) the load or operating level(s) designated as normal in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec, as applicable;

(C) the two load or operating levels (i.e., low, mid, or high) identified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(D) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load or operating levels; and

(E) activation and deactivation dates when the normal load or operating levels change and are updated.

(viii) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in subsection 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam;

(B) the load level designated as normal, pursuant to subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(C) the date of the load analysis used to determine the normal load level.

(ix) Information related to quality assurance testing, including, as applicable: identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels expressed as percent of span for the calibration error test and linearity check; and calculations for determining maximum potential concentration, maximum expected concentration if applicable, maximum potential flow rate, and span.

(x) If applicable, apportionment strategies under sections 75.10 through 75.18 of 40 CFR Part 75.

(xi) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(A) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and (i) and (iii) above. The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(B) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(xii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in (c) and (d) above, the WEB source with a sulfur dioxide emitting unit using either of the methodologies in (1)(a)(ii)(B) above shall include the following information in its monitoring plan for the specific situations described:

(i) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the Account Representative shall include the following information in the monitoring plan:

(A) parameter monitored;

(B) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate expressed as the upper range value or unit maximum for each fuel flowmeter;

(C) test method used to check the accuracy of each fuel flowmeter;

(D) submission status of the data;

(E) monitoring system identification code;

(F) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily

or annual fuel sampling for sulfur content, as applicable;

(G) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeters, and the stacks. The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling locations. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(H) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either subsection 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(I) for units using the 720 hour test under subsection 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(J) for units using the 720 hour test under subsection 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(ii) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission excepted methodology of 40 CFR 75.19, the WEB source shall include the information in (A) through (F) in the monitoring plan that accompanies the initial certification application.

(A) The results of the analysis performed to qualify as a low mass emissions unit under 40 CFR 75.19(c). This report will include either the previous three years' actual or projected emissions. The report will include the current calendar year of application; the type of qualification; years one, two, and three; annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and annual operating hours for years one, two, and three.

(B) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeters, and the stacks. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe.

(C) For units which use the long term fuel flow methodology under 40 CFR 75.19(c)(3), a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units.

(D) A statement that the unit burns only gaseous fuels or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuels or fuel oil and a list of the fuels that are projected to be burned.

(E) A statement that the unit meets the applicability requirements in 40 CFR 75.19(a) and (b) with respect to sulfur dioxide emissions.

(F) Any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under 40 CFR 75.19(a) and (b).

(iii) For each gas-fired unit, the account representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under this section shall not be part of a WEB source's operating permit issued under R307-415, and modifications to the elements of the plan shall not require a permit modification.

(3) Certification and Recertification.

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 or Appendix B of State Implementation Plan Section XX, as applicable. Certification or recertification of a monitoring system by the U.S. EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this Rule shall constitute certification under the WEB Trading Program.

(b) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following to the director:

(i) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the director may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under (2)(c) above; and

(ii) an initial certification application within 45 days after testing is complete.

(c) A monitoring system will be considered provisionally certified while the application is pending.

(d) Upon receipt of a disapproval of the certification of a monitoring system or component, the certification is revoked. The data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of revocation until the WEB source completes a subsequently-approved certification or re-certification test in accordance with the procedures in this rule. The WEB source shall apply the substitute data procedures in this rule to replace all of the invalid data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality Control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, the applicable quality assurance and quality control requirements in Appendix B of State Implementation Plan Section XX on and after the date that certification testing commences.

(5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with R307-250, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, with substitute data in accordance with that Appendix.

(b) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the WEB source shall use one of the following procedures.

(i) If the WEB source will use a continuous emissions monitoring system to comply with this Section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75. The procedures for conditional data validation under section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable.

(ii) If the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75.

(iii) If the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2.

(iv) If using a protocol in Appendix B of State Implementation Plan Section XX, follow the procedures in the applicable protocol.

(6) Deadlines.

(a) The initial monitoring plan required under R307-250-9(2)(a)(i) shall be submitted by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(ii) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the 100 tons per year sulfur dioxide emissions threshold in R307-250-4(1)(b).

(iii) for any new WEB source, the monitoring plan shall be included with the notice of intent required by R307-401.

(b) The detailed monitoring plan required under R307-250-9(2)(a)(ii) shall be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below. Modifications to the monitoring plan shall be submitted within 90 days of implementing revised monitoring plans.

(c) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of R307-250-9(3), including any referenced in Appendix B of State Implementation Plan Section XX, by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in R307-250-12.

(ii) for any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under (6)(a)(ii) above.

(iii) for any new WEB source or any new unit at a WEB source, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in R307-250-9(3)(b).

(e) For each control period, the WEB source shall submit each quarterly report no later than 30 days after the end of each calendar quarter, and shall submit each annual report no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under this Rule for a period of five years. In addition, the WEB source shall keep a copy of all certificates for the duration of the WEB Trading Program. Unless otherwise requested by the WEB source and approved by the director, the copies shall be kept on site.

(b) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section or in Appendix B of State Implementation Plan Section XX. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this Section.

(8) Reporting.

(a) Quarterly Reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the director, including hourly and quality assurance activity information, and shall be submitted in a manner compatible with the WEB EATS. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this paragraph (a) shall be required. The director may require that a copy of that report or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions be submitted separately.

(b) Annual Report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify total emissions for all units monitored in accordance with (1)(a) above and the total emissions for all units with emissions estimated in accordance with (1)(b) above. The annual report shall be submitted within 60 days after the end of a control period.

(c) If directed by the director, monitoring plans, reports, certifications or recertifications, or emissions data required to be submitted under this section also shall be submitted to the TSA.

(d) If the director rejects any report submitted under this subsection that contains errors or fails to satisfy the requirements of this section, the account representative shall resubmit the report to correct any deficiencies.

(9) Petitions. A WEB source may petition for an alternative to any requirement specified in (1)(a)(ii) above. The petition shall require approval of the director and the Administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable; and

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed, is consistent with the purposes of R307-250, and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the director may require.

(10) For any monitoring plans, reports, or other information submitted under this Rule, the account representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate for the WEB source submitted under R307-250-5.

R307-250-10. Allowance Transfers.

(1) Procedure. To transfer allowances, the account representative shall submit the following information to the TSA:

(a) the number or numbers identifying the transferor account;

(b) the number or numbers identifying the transferee account;

(c) the serial number of each allowance to be transferred; and

(d) the transferor's account representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year, or, if this date is not a business day, midnight of the first business day thereafter, following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the TSA in order to demonstrate compliance under R307-250-12 for that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative shall submit the following information to the TSA:

(a) the transfer account number identifying the transferor

account;

(b) the serial number of each allowance to be retired; and

(c) the transferor's account representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

(4) Special Reserve Compliance Accounts. Allowances shall not be transferred out of special reserve compliance accounts. Allowances may be transferred into special reserve compliance accounts in accordance with the procedures in paragraph (1) above.

R307-250-11. Use of Allowances from a Previous Year.

(1) Any allowance that is held in a compliance account or general account will remain in the account until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

(2) In order to demonstrate compliance under R307-250-12(1) for a control period, WEB sources shall only use allowances allocated for that control period or any previous year.

(3) If flow control procedures for the current control period have been triggered as outlined in SIP Section XX.E.3.h(2), then the use of allowances that were allocated for any previous year will be limited in the following ways.

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) The number determined in (a) above will be multiplied by the flow control ratio established in accordance with SIP Section XX.E.3.h to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in (b) above may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under R307-250-12.

(4) Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with R307-250-12(1), allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

(5) Special Reserve Compliance Accounts. Unused allowances in any special reserve compliance account will be retired after the compliance deductions under R307-250-12 have been completed for each control period, and shall not be available for use in any future control period.

R307-250-12. Compliance.

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with (b)and (c) below and R307-250-11, as of the allowance transfer deadline in the WEB source's compliance account, together with any current control year allowances held in the WEB source's special reserve compliance account under R307-250-9(1)(b), in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of R307-250-9.

(i) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone as determined in accordance with SIP Section XX.E.1.

(ii) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source became a WEB source.

(iii) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(iv) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in SIP Section XX.E.1.d, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(b) Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

(i) the allowance was allocated for the current control period or meets the requirements in R307-250-11 for use of allowances from a previous control period, and

(ii) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined as follows.

(i) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(b), as reported by the source to the director, in accordance with R307-250-9, and recorded in the WEB EATS shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceed the allowances in such special reserve compliance account, the WEB source shall account for such excess emissions in the following paragraph (ii).

(ii) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(a), as reported by the source to the director in accordance with R307-250-9 and recorded in the WEB EATS, together with any excess emissions as calculated in the preceding paragraph (i), shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11.

(iii) If the comparison in paragraph (ii) above results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in R307-250-12(3)(a).

(d) Other than allowances in a special reserve compliance account for units monitored under R307-250-9(1)(b), to the extent consistent with R307-250-11, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to R307-250-9(1)(b) shall be deducted as specified in paragraph (c)(i) above.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the director a compliance

certification report for the source.

(b) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(i) identification of each WEB source;

(ii) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account or special reserve compliance account for compliance with the allowance limitation; and

(iii) the compliance certification report according to (c) below.

(c) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

(i) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(ii) whether sulfur dioxide emissions data was submitted to the director in accordance with R307-250-9(8) and other applicable requirements for review, revision as necessary, and finalization;

(iii) whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with R307-250-9(2);

(iv) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(v) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with R307-250-9(1)(a)(iii) of this rule remained permanently retired and had no emissions for the entire applicable period; and

(vi) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

(3) Penalties for Any WEB Source Exceeding Its Allowance Limitations.

(a) Allowance Deduction Penalty.

(i) An allowance deduction penalty will be assessed equal to three times the number of the WEB source's tons of sulfur dioxide emissions in excess of its allowance limitation for a control period, determined in accordance with R307-250-12(1). Allowances allocated for the following control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(ii) Any allowance deduction required under R307-250-12(1)(c) shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or Utah Code 19-2. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation, or for each other violation of R307-250.

(4) Liability.

(a) WEB Source liability for non-compliance. Separate and regardless of any allowance deduction penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under Utah Code 19-2. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(b) General Liability.

(i) Any provision of the WEB Trading Program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(ii) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to Utah Code 19-2.

(iii) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to the Utah Code.

R307-250-13. Special Penalty Provisions for the 2018 Milestone.

(1) If the WEB Trading Program is triggered as outlined in SIP Section XX.E.1, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(a) All WEB sources shall register, and shall open a compliance account within 180 days after the program trigger date, in accordance with R307-250-6(1) and R307-250-8.

(b) The TSA will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the director allocates the 2018 allowances under SIP Section XX.E.3.a and XX.E.4.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in R307-250-10(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018, including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in SIP Section XX.E.2, and R307-150

(e) In accordance with R307-250-11(4) and (d) above, the director will seek a minimum financial penalty of $5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation.

(i) Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of $5,000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

(ii) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in (i) above will be subject to enforcement action in which the director will seek a financial penalty for the excess emissions based on the statutory maximum civil penalties.

(f) Each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

(2) The provisions in R307-250-13 shall continue to apply for each year after the 2018 emission year until:

(a) the first control period under the WEB trading program; or

(b) the director determines, in accordance with SIP Section XX.E.1.c(10), that the 2018 sulfur dioxide milestone has been met.

(3) If the special penalty provisions continue after the year 2018 as outlined in (2) above, the deadlines listed in (1)(b) through (e) above will be adjusted as follows:

(i) for the 2019 control period the dates will be adjusted forward by one year, except that the allowance transfer deadline shall be midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and

(ii) for each control period after 2018 that the special penalty provisions are assessed, the dates in (i) above for the 2019 control period will be adjusted forward by one year.

(4) The TSA will record the same number of allowances for each WEB source as were recorded for the 2018 control period for each subsequent control period.

R307-250-14. Integration into Permits.

(1) Initial Permitting. Each source that is a WEB source on or before the program trigger date shall follow the procedures outlined in R307-415 to incorporate all of the applicable requirements of this rule into the permit issued to it under R307-415.

(2) Post Trigger Permitting.

(a) New WEB Source. Any existing source that becomes a WEB source after the program trigger date shall submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the source became a WEB source, and shall follow the procedures of R307-415 to obtain an operating permit.

(b) WEB Sources No Longer Subject to Permitting Under R307-415. If a WEB source's permit issued under R307-415 ceases to be effective or required, the WEB source must submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the permit issued under R307-415 ceased to be effective or required.

KEY: air pollution, sulfur dioxide, market trading program
November 10, 2008 19-2-104(1)(a)
Notice of Continuation February 8, 2008 19-2-104(3)(e)

R307. Environmental Quality, Air Quality.
R307-301. Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure.
R307-301-1. Definitions.

The following additional definitions apply to R307-301.

"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party or blender control area responsible party must comply with the average oxygen content standard.

"Blender control area responsible party (blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.

"Blending Allowance" means the amount of oxygen a gasoline blend is allowed above its upper oxygen content limit. Any gasoline blended under the provisions of 42 U.S.C. 7545(f)(1) addressing substantially similar fuels are permitted a blending allowance of 0.2% oxygen by weight. Blending allowances are not given to gasoline blends granted a waiver by the Administrator under 42 U.S.C. 7545(f)(4).

"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.

"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period.

"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit-control additives.

"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

"Control area terminal" means either a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, or a terminal at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives, or both. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet or wholesale purchaser-consumer's installation. A distributor is a blender CAR if the distributor alters the oxygen content of gasoline intended for use in any control area through the addition of one or more oxygenates, or lowers its oxygen content below the minimum oxygen content specified in R307-301-6.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) or state specifications.

"Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon the percent by volume of each type of oxygenate contained in the gasoline blend, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.

"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar as provided for under 42 U.S.C. 7545(f)(1), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of 42 U.S.C. 7545(f)(4).

"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.

"Oxygenated gasoline" means any gasoline which contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, that was produced through the addition of one or more oxygenates to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party or blender control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the requirement of 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standard and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or substantially similar ruling as unleaded gasoline as described in the definition of oxygenate.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.

"Refinery" means a plant at which gasoline is produced.

"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer installations.

"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h or IX.C.6.e of the state implementation plan.

"Wholesale purchaser-consumer" means any organization that:

(1) is an ultimate consumer of gasoline;

(2) purchases or obtains gasoline from a supplier for use in motor vehicles; and

(3) receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.

R307-301-2. Applicability and Control Period Start Dates.

(1) Unless waived under authority of 42 U.S.C. 7545(m)(3) by the Administrator of the Environmental Protection Agency, R307-301 is applicable in Utah and Weber Counties.

(2) The first control period for areas for which R307-301 is applicable begins on November 1 following the trigger date

for the county in which it has been triggered.

R307-301-3. Average Oxygen Content Standard.

(1) All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in R307-301-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% oxygen by weight.

(2) The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the control period.

(3) All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) - Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) - Regulation of Fuels and Fuel Additives.

(4) Any gasoline blended under 42 U.S.C. 7545(f)(1) dealing with substantially similar fuels must be blended in compliance with the criteria specified in the substantially similar ruling. Any extra volume of oxygenate or oxygenates added to gasoline blended under a substantially similar ruling as provided for under 42 U.S.C. 7545(f)(1) in excess of the criteria specified in 42 U.S.C. 7545(f)(1) may not be included in the compliance calculations specified in R307-301-5(2) and (3).

(5) Any gasoline blended under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4) must be blended in compliance with the criteria specified in the appropriate waiver. Gasoline blends waived to oxygen content above 2.7% oxygen by weight are not permitted a blending allowance for blending tolerance purposes. Any extra volume of oxygenate in excess of the criteria specified in the appropriate waiver may not be included in the compliance calculations specified in R307-301-5(2) or (3).

(6) Oxygen content shall be determined in accordance with R307-301-4.

R307-301-4. Sampling, Testing, and Oxygen Content Calculations.

(1) For the purpose of determining compliance with the requirements of R307-301, the oxygen content of gasoline shall be determined by one or both of the two following methods.

(a) Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Supplementary Information - Oxygen Content Conversions, published in the Federal Register on October 20, 1992.

(b) Chemical Analysis Method.

(i) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;

(ii) Determine the oxygenate content of the sample by use of:

(A) the test method specified in ASTM Designation D4815-93, Testing Procedures--Method--ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography,

(B) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or

(C) an alternative test method approved by the director.

(iii). Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in (3) below.

(2) All volume measurements required in R307-301-4 shall be adjusted to 60 degrees Fahrenheit.

(3) For the purposes of R307-301, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:

TABLE

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction oxygen	specific gravity at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary-butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary-butyl ether (ETBE)	0.1566	0.7452

(4) Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.

(5) Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in (1) above. Documentation shall include the percent oxygen by weight, each type of oxygenate, the purity of each oxygenate, and the percent oxygenate by volume for each oxygenate. If a CAR or blender CAR alters the oxygen content of a gasoline intended for use within a control area during a control period, the CAR or blender CAR must determine the oxygen content of the gasoline by use of the methodology specified in (1) above.

R307-301-5. Alternative Compliance Options.

(1) Each CAR or blender CAR shall comply with the standard specified in R307-301-3 by means of the method set forth in either (2) or (3) below and shall specify which option will be used at the time of the registration required under R307-301-7.

(2) Compliance calculation on average basis.

(a) The CAR or blender CAR shall determine compliance with the standard specified in R307-301-3 for each averaging period and for each control area by:

(i) Calculating the total volume of gasoline labeled as oxygenated that is sold or dispensed, not including volume dispensed or sold to another CAR or blender CAR, for use in the control area which is the sum of:

(A) the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed;

(B) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in a different control area;

(C) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in any non-control area.

(ii) Calculating the required total oxygen credit units. Multiply the total volume in gallons of gasoline labeled as oxygenated that is sold or dispensed for use in the control area, as determined by (i) above, by the oxygen content standard specified in R307-301-3(1).

(iii) Calculating the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of gasoline labeled as oxygenated that was sold or dispensed for use in the control area as determined by (i) above, multiplied by the actual oxygen content by weight percent associated with each batch or truckload. If a batch or truckload of gasoline is blended under the substantially similar provisions of 42 U.S.C. 7545(f)(1) or under a waiver granted by the Environmental Protection Agency

under the provisions of 42 U.S.C. 7545(f)(4), any extra volume of oxygenate in excess of the substantially similar criteria including the blending tolerance of 0.2% oxygen by weight, or in excess of the appropriate waiver, cannot be included in the calculation of oxygen credit units.

(iv) Calculating the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by (iii) above;

(A) plus the total oxygen credit units purchased, acquired through trade and received; and

(B) minus the total oxygen credit units sold,given away and provided through trade.

(v) Comparing the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in R307-301-3 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(vi) In transferring oxygen credit units, the transferor shall provide the transferee with information as to how the credits were calculated, including the volume and oxygen content by weight percent of the gasoline associated with the credits.

(b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see (c) below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

(c) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(i) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(ii) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(iii) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(iv) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

(d) Credit transfers. Credits may be used in the compliance calculation in (2)(a)(i) above, provided that:

(i) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(ii) the credits are generated in the same averaging period as they are used;

(iii) the ownership of credits is transferred only between CARs or blender CARs registered under the averaging compliance option specified in R307-301-7;

(iv) the credit transfer agreement is made no later than 30 working days, as defined in R307-301-1, after the final day of the averaging period in which the credits are generated; and

(v) the credits are properly created.

(e) Improperly created credits.

(i) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(ii) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

(3) Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in R307-301-1 shall have an oxygen content of at least the average oxygen content standard specified in R307-301-3(1). The maximum oxygen content which may be used to calculate compliance is the average oxygen content standard specified in R307-301-3. In addition, the CAR or blender CAR is prohibited from selling, trading or providing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

R307-301-6. Minimum Oxygen Content.

(1) Any gasoline which is sold or dispensed by a CAR, blender CAR, carrier, distributor, or reseller for use within a control area, as defined in R307-301-1, during the control period, shall contain not less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement shall begin five working days, as defined in R307-301-1, before the applicable control period and shall apply until the end of that period.

(2) This requirement shall apply to all parties downstream of the CAR or blender CAR unless the gasoline will be sold or dispensed to another CAR or blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area during a control period, as defined in R307-301-1, shall not contain less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%. This requirement shall apply during the entire applicable control period.

(3) Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies described in R307-301-4. This determination shall include the oxygen content by weight percent, each type of oxygenate, and percent oxygenate by volume for each type of oxygenate.

(4) Any gasoline sold or dispensed by a CAR or blender CAR for use within a control area and for which compliance is demonstrated using the method specified in (3) shall contain not less than the average oxygen content standard specified in R307-301-3(1), unless the gasoline is sold or dispensed to another registered CAR or blender CAR.

R307-301-7. Registration.

(1) All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area during a control period, including CARs, blender CARs, carriers, resellers, and distributors, shall petition the director for registration not less than one calendar month in advance of such sales or transfers of gasoline into the control area during the control period.

(2) This petition for registration shall be on forms prescribed by the director and shall include the following information:

(a) the name and business address of the CAR, blender CAR, carrier, reseller, or distributor;

(b) in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

(c) in the case of a blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a blender CAR;

(d) in the case of a carrier, distributor, or reseller, the names and addresses of retailers they supply;

(e) the address and physical location where documents which are required to be retained by R307-301 shall be kept; and

(f) in the case of a CAR or blender CAR, the compliance option chosen under provisions of R307-301-5 and a list of oxygenates which will be used.

(3) If the registration information previously supplied by a registered party under the provisions of (2)(a) through (e) becomes incomplete or inaccurate, that party shall submit updated registration information to the director within 15 working days as defined in R307-301-1. If the information required under (2)(f) is to change, the updated registration information must be submitted to the director before the change is made.

(4) No person shall participate in the oxygenated gasoline program as a CAR, blender CAR, carrier, reseller, or distributor until such person has been notified by the director that such person has been registered as a CAR, blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the director. The director shall issue each CAR, blender CAR, carrier, reseller, or distributor a unique identification number within one calendar month of the petition for registration.

R307-301-8. Recordkeeping.

(1) Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required.

(a) Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(i) results of the tests utilized to determine the types of oxygenates and percent by volume;

(ii) percent oxygenate content by volume of each oxygenate;

(iii) oxygen content by weight percent;

(iv) purity of each oxygenate;

(v) total volume of gasoline; and

(vi) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

(b) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck- or terminal-lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain a copy of the transfer document for each batch or truckload of gasoline received, purchased, sold or dispensed, and shall maintain records containing the following information:

(i) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(ii) volume of each batch or truckload of gasoline going into or out of the terminal;

(iii) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(iv) for each oxygenate, the type of oxygenate, purity if available, and percent oxygenate by volume;

(v) oxygen content by weight percent of all batches or truckloads received at the terminal;

(vi) destination county of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline, if the destination is within Utah or Weber County;

(vii) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer, and

(viii) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(c) CARs and blender CARs. Each CAR must maintain records containing the information listed in (b) above. Each CAR and blender CAR must maintain a copy of the transfer document for each shipment of gasoline received, purchased, sold or dispensed, as well as the records containing the following information:

(i) CAR or blender CAR identification number;

(ii) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(iii) data on each shipment of gasoline received, including:

(A) the volume of each shipment;

(B) type of oxygenate or oxygenates, and percentage by volume; and

(C) oxygen content by weight percent;

(iv) the volume of each receipt of bulk oxygenates;

(v) the name and address of the parties from whom bulk oxygenate was received;

(vi) the date and destination county of each sale of gasoline, if the destination is within Utah or Weber County;

(vii) data on each shipment of gasoline sold or dispensed including:

(A) the volume of each shipment;

(B) type of each oxygenate, and percent by volume for each oxygenate, and

(C) oxygen content by weight percent;

(viii) documentation of the results of all tests done regarding the oxygen content of gasoline;

(ix) the names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and

(x) in the case of CARs or blender CARs that elect to comply with the average oxygen content standard specified in R307-301-3 by means of the compliance option specified in R307-301-5(2) must also maintain records containing the following information:

(A) records supporting and demonstrating compliance with the averaging standard specified in R307-301-3; and

(B) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification numbers of the CARs and blender CARs involved in the individual transactions, and the amount of credits transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in R307-301-1, following the close of the averaging period must be included.

(d) Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(i) the names, addresses and CAR, blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:

(A) the transfer document as specified in R307-301-8(3) and

(B) a copy of each contract for delivery of oxygenated gasoline and

(ii) data on every shipment of gasoline bought, sold or transported, including:

(A) volume of each shipment;

(B) for each oxygenate, the type, percent by volume and purity (if available);

(C) oxygen content by weight percent; and

(D) destination county of each sale or shipment of

gasoline, if the destination is within Utah or Weber County; and

(iii) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.

(e) Carriers, distributors, resellers, terminal operators, and oxygenate blenders must keep a copy of the transfer document for each truckload or shipment of gasoline received, obtained, purchased, sold or dispensed.

R307-301-9. Reports.

(1) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 by the compliance option specified in R307-301-5(2) shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(2).

(2) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(3), including the volume of oxygenated gasoline sold or dispensed into each control area during the control period.

(3) The report is due 30 working days, as defined in R307-301-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the director.

R307-301-10. Transfer Documents.

Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

(1) the date of the transfer;

(2) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;

(3) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;

(4) the volume of gasoline which is being transferred;

(5) identification of the gasoline as oxygenated or, if non-oxygenated, with a statement labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period";

(6) the location of the gasoline at the time of the transfer;

(7) type of each oxygenate and percentage by volume for each oxygenate;

(8) oxygen content by weight percent; and

(9) for gasoline which is in the gasoline distribution network between the refinery or import installation and the control area terminal, for each oxygenate used, the type of oxygenate, its purity and percentage by volume and the oxygen content by weight percent.

R307-301-11. Prohibited Activities.

(1) During the control period, no refiner, oxygenate blender, CAR, blender CAR, control area terminal operator, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

(a) gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% oxygen, for use during the control period, in a control area unless clearly marked documents accompany the gasoline labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period"; or

(b) gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

(2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% in a control area.

(3) No person may operate as a CAR or blender CAR or hold themselves out as such unless they have been properly registered by the director. No CAR or blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR or blender CAR for use in a control area, unless:

(a) the average oxygen content of the gasoline during the averaging period meets the standard established in R307-301-3; and

(b) the gasoline contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% on a per-gallon basis.

(4) For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:

(a) transfer documentation containing the information specified in R307-301-8(3) accompanies the gasoline and

(b) the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

(a) the non-oxygenated gasoline is segregated from oxygenated gasoline;

(b) clearly marked documents accompany the non-oxygenated gasoline labeling it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period," and

(c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in R307-301-8 through 10.

(7) No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer installation, without transfer documents which accurately contain the information required by R307-301-10).

(8) Liability for violations of the prohibited activities.

(a) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(a) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored,

transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(b) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(b) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(9) Defenses for prohibited activities.

(a) In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under (1) above, that person shall not be in violation if they can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent;

(ii) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by R307-301-8; and

(iii) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in (10) below.

(b) In any case in which a retailer or wholesale purchaser-consumer would be in violation under (2) above, the retailer or wholesale purchaser-consumer shall not be in violation if it can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent; and

(ii) that the retailer or wholesale purchaser-consumer possess documents which should accompany the gasoline, which contain the information required by R307-301-8 through 10.

(c) Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by (a) above, that the violation was caused by any of the following:

(i) an act in violation of law (other than the Clean Air Act or R307-301), or an act of sabotage or vandalism, or

(ii) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser-consumer which is supplied by any of the persons listed in (a) above, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(iii) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

(d) In R307-301-8 through 11, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

(10) Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

R307-301-12. Labeling of Pumps.

(1) Any person selling or dispensing oxygenated gasoline pursuant to R307-301 is required to label the fuel dispensing system with one of the following notices.

(a) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

(b) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in concentrations of at least one percent) from November 1 through February 29."

(2) The label letters shall be block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

(3) The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

(4) The retailer or wholesale purchaser-consumer shall be responsible for compliance with R307-301-12.

R307-301-13. Inspections.

Inspections of registered parties, control area retailers, refineries, control area terminals, oxygenate blenders and control area wholesale purchaser-consumers may include the following:

(1) physical sampling, testing, and calculation of oxygen content of the gasoline as specified in R307-301-4;

(2) review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in R307-301-8; and

(3) in the case of control area retailers and wholesale purchaser-consumers, verification that gasoline dispensing pumps are labeled in accordance with R307-301-12.

R307-301-14. Public and Industry Education Program.

The director shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

KEY: air pollution control, motor vehicles, gasoline, petroleum

May 18, 2004 19-2-101

Notice of Continuation February 1, 2012 19-2-104

R307. Environmental Quality, Air Quality.
R307-302. Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties.
R307-302-1. Purpose and Definitions.

(1) R307-302 establishes emission standards for residential fireplaces and solid fuel burning devices.

(2) The following additional definitions apply to R307-302:

"Sole source of heat" means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"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.

R307-302-2. Applicability.

(1) R307-302-3 and R307-302-6 shall apply in PM10 and PM2.5 nonattainment and maintenance areas as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

R307-302-3. No-Burn Periods for Fine Particulate.

(1) By June 1, 2013, sole sources of residential heating using solid fuel burning devices must be registered with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents of the affected areas shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. Residents within the geographical boundaries described in R307-302-2(1) shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) A national weather service forecasted clearing index value of 250 or less;

(b) Forecasted wind speeds of three miles per hour or less;

(c) Passage of a vigorous cold front through the Wasatch Front; or

(d) Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2), residents of Provo City shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and are registered with the director or the local health district office.

R307-302-5. Opacity for Residential Heating.

Except during no-burn periods as required by R307-302-3 and 4, 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.

R307-302-6. Prohibition.

(1) Beginning September 1, 2013, no person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA Phase 2 certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA Phase 2 certified stove within a residential dwelling installed prior to the rule effective date may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, fireplaces, stoves, residential solid fuel burning

January 1, 2013	**19-2-101**
Notice of Continuation June 2, 2010	**19-2-104**

R307. Environmental Quality, Air Quality.
R307-305. Nonattainment and Maintenance Areas for PM10: Emission Standards.
R307-305-1. Purpose.

This rule establishes emission standards and work practices for sources located in PM10 nonattainment and maintenance areas to meet the reasonably available control measures requirement in section 189(a)(1)(C) of the Act.

R307-305-2. Applicability.

The requirements of R307-305 apply to the owner or operator of any source that is listed in Section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-305-3. Visible Emissions.

(1) Visible emissions from existing installations except diesel engines shall be of a shade or density no darker than 20% opacity. Visible emissions shall be measured using EPA Method 9.

(2) No owner or operator of a gasoline engine or vehicle shall allow, cause or permit the emissions of visible contaminants.

(3) Emissions from diesel engines, except locomotives, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(4) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

R307-305-4. Particulate Emission Limitations and Operating Parameters (PM10).

Any source with emission limits included in Section IX, Part H, of the Utah state implementation plan shall comply with those emission limitations and operating parameters. Specific limitations will be set by the director, through an approval order issued under R307-401, for installations within a source that do not have limitations specified in the state implementation plan.

R307-305-5. Compliance Testing (PM10).

Compliance testing for PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the state implementation plan. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for inventory purposes for each PM10 compliance test in accordance with Method 202, or other appropriate EPA approved reference method.

R307-305-6. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

R307-305-7. Compliance Schedule for New Nonattainment Areas.

The provisions of R307-305 shall apply to the owner or operator of a source that is located in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-201 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, particulate matter, PM10, PM 2.5
September 2, 2005 19-2-104(1)(a)
Notice of Continuation June 2, 2010

R307. Environmental Quality, Air Quality.
R307-306. PM10 Nonattainment and Maintenance Areas: Abrasive Blasting.
R307-306-1. Purpose.

This rule establishes requirements that apply to abrasive blasting operations in PM10 nonattainment and maintenance areas.

R307-306-2. Definitions.

The following additional definitions apply to R307-306.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment used in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Confined Blasting" means any abrasive blasting conducted in an enclosure that significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Multiple Nozzles" means a group of two or more nozzles used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting that is not confined blasting as defined above.

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

R307-306-3. Applicability.

R307-306 applies to any person who operates abrasive blasting equipment in a PM10 nonattainment or maintenance area, or to sources listed in Section IX, Part H of the state implementation plan.

R307-306-4. Visible Emission Standard.

(1) Except as provided in (2) below, visible emissions from abrasive blasting operations shall not exceed 20% opacity except for an aggregate period of three minutes in any one hour.

(2) If the abrasive blasting operation complies with the performance standards in R307-306-6, visible emissions from the operation shall not exceed 40% opacity, except for an aggregate period of 3 minutes in any one hour.

R307-306-5. Visible Emission Evaluation Techniques.

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the visible emission standards in R307-306-4.

(4) Emissions from confined blasting shall be measured at the densest point after the air contaminant leaves the enclosure.

R307-306-6. Performance Standards.

(1) To satisfy the requirements of R307-306-4(2), the abrasive blasting operation shall use at least one of the following performance standards:

(a) confined blasting;

(b) wet abrasive blasting;

(c) hydroblasting; or

(d) unconfined blasting using abrasives as defined in (2) below.

(2) Abrasives.

(a) Abrasives used for dry unconfined blasting referenced in (1) above shall comply with the following performance standards:

(i) Before blasting, the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(ii) After blasting the abrasive shall not contain more than 1.8% by weight material 5 microns or smaller.

(b) Abrasives reused for dry unconfined blasting are exempt from (a)(ii) above, but must conform with (a)(i) above.

(3) Abrasive Certification. Sources using the performance standard of (1)(d) above to meet the requirements of R307-306-4(2) must demonstrate they have obtained abrasives from a supplier who has certified (submitted test results) to the director at least annually that such abrasives meet the requirements of (2) above.

R307-306-7. Compliance Schedule.

The provisions of R307-306 shall apply in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-206 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, abrasive blasting, PM10
September 2, 2005 19-2-101(1)(a)
Notice of Continuation June 2, 2010

R307. Environmental Quality, Air Quality.
R307-309. Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust.
R307-309-1. Purpose.

This rule establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust.

R307-309-2. Definitions.

The following additional definition applies to R307-309:

"Material" means sand, gravel, soil, minerals, and other matter that may create fugitive dust.

R307-309-3. Applicability.

(1) Applicability. R307-309 applies to all sources of fugitive dust and fugitive emissions located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011), except as specified in R307-309-3(2).

(2) Exemptions.

(a) Agriculturally derived fugitive dust sources, including agricultural or horticultural activities specified in 19-2-114 (1)-(3) are exempt from the provisions of R307-309.

(b) Any activity subject to R307-307 is exempt from R307-309-7.

R307-309-4. Fugitive Emissions.

(1) Fugitive emissions from any source shall not exceed 15% opacity.

(2) Opacity observations of fugitive emissions from stationary sources shall be conducted in accordance with EPA Method 9.

(3) For intermittent sources and mobile sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

R307-309-5. General Requirements for Fugitive Dust.

(1) Except as provided in R307-309-5(3), opacity caused by fugitive dust shall not exceed:

(a) 10% at the property boundary; and

(b) 20% on site

(2) Any person owning or operating a new or existing source of fugitive dust one-quarter acre or greater in size shall submit a fugitive dust control plan to the director in accordance with R307-309-6.

(3) Opacity in R307-309-5(1) shall not apply when the wind speed exceeds 25 miles per hour if the owner or operator has implemented, and continues to implement, the accepted fugitive dust control plan in R307-309-6 and administers at least one of the following contingency measures:

(a) Pre-event watering;

(b) Hourly watering;

(c) Additional chemical stabilization; or

(d) Cease or reduce fugitive dust producing operations.

(e) Other contingency measure approved by the director.

(4) Wind speed may be measured by a hand-held anemometer or equivalent device.

(5) Opacity observations of fugitive dust from any source shall be measured at the densest point of the plume.

(a) For mobile sources, visible emissions shall be measured at a point not less than 1/2 vehicle length behind the vehicle and not less than 1/2 the height of the vehicle.

(b) Opacity observations of emissions from stationary sources shall be measured in accordance with EPA Method 9.

(c) For intermittent sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

R307-309-6. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations, clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, moving trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads, or demolition activities including razing homes, buildings or other structures, shall submit a fugitive dust control plan on a form provided by the director or another format approved by the director.

(a) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-6.

(2) Activities regulated by R307-309 shall not commence before the fugitive dust control plan is approved by the director.

(a) Successful completion of the web-based division-sponsored fugitive dust control plan tool shall constitute plan approval.

(b) Hard copy fugitive control plan submission must be reviewed and approved by the director prior to commencing activities regulated by R307-309.

(3) Sources with an existing fugitive dust control plan who make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(4) Minimum fugitive dust control plan requirements. At a minimum, a fugitive dust control plan must include the following requirements as they apply to a source:

(a) Backfilling.

(i) Stabilize backfill material when not actively handling.

(ii) Stabilize backfill material during handling.

(iii) Stabilize soil at completion of backfilling activity.

(iv) Stabilize material while using pipe padder equipment.

(b) Blasting.

(i) Stabilize surface soils where drills, support equipment and vehicles will operate.

(ii) Stabilize soil during blast preparation activities.

(iii) Stabilize soil after blasting.

(c) Clearing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize disturbed soil immediately after clearing and grubbing activities.

(iii) Stabilize slopes at completion of activity.

(d) Clearing forms, foundations and slabs.

(i) Use water, sweeping and vacuum to clear.

(e) Crushing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize material before, during and after crushing.

(iii) Traffic mileage or speed controls.

(iv) Minimize transfer height.

(f) Cut and fill.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Pre-water soils.

(iii) Stabilize soil during and after cut activities.

(g) Demolition-implosion.

(i) Stabilize surface area where support equipment and vehicles will be operated.

(ii) Stabilize demolition debris immediately following blast and safety clearance.

(iii) Stabilize and clean surrounding area immediately following blast and safety clearance.

(h) Demolition-mechanical and manual.

(i) Stabilize surface areas where support equipment and vehicles will operate.

(ii) Stabilize demolition debris during handling.

(iii) Stabilize debris following demolition.

(iv) Stabilize surrounding area following demolition.

(i) Disturbed soil.

(i) Limit disturbance of soils where possible.
(ii) Stabilize and maintain stability of all disturbed soil throughout construction site.
(j) Hauling materials.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize materials during transport on site.
(iii) Clean wheels and undercarriage of haul trucks prior to leaving construction site.
(k) Paving subgrade preparation.
(i) Stabilize adjacent disturbed soils following paving activities by applying water, chemical stabilizer and/or synthetic cover.
(l) Sawing and cutting materials.
(i) Limit visible emissions using water or vacuum.
(m) Screening.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(ii) Pre-treat material prior to screening.
(iii) Stabilize material during screening.
(iv) Stabilize material and surrounding area immediately after screening.
(v) Minimize transfer height.
(n) Staging areas.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize staging area soils during use.
(iii) Stabilize staging area soils at project completion.
(o) Stockpiling.
(i) Stabilize stockpile materials during and after handling.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(p) Trackout prevention and cleanup.
(i) Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect.
(q) Traffic on unpaved routes and parking areas.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(r) Trenching.
(i) Stabilize surface soils where trenching equipment, support equipment and vehicles will operate.
(ii) Stabilize soils after trenching.
(s) Truck loading.
(i) Empty loader bucket slowly and keep loader bucket close to the truck to minimize the drop height while dumping.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(5) The fugitive dust control plan must include contact information, site address, total area of disturbance, expected start and completion dates, identification of dust suppressant and plan certification by signature of a responsible person.

R307-309-7. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-8. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-9. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.
(2) Unpaved Roads. Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-10. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-309-10 and not by R307-309-6,7, 8, 9, and 11.
(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.
(3) The fugitive dust control measures to be used shall include:
(a) Periodic watering of unpaved roads or;
(b) Use of chemical stabilizers on unpaved roads or;
(c) Paving of roads.
(d) Immediate removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface.
(e) Restricting the speed of vehicles in and around the mining operation,
(f) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust.
(g) Restricting the travel of vehicles on other than established roads.
(h) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage.
(i) Substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion.
(j) Minimizing the area of disturbed land.
(k) Prompt revegetation of regraded lands.
(l) Planting of special windbreak vegetation at critical points in the permit area.
(m) Control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director.
(n) Restricting the areas to be blasted at any one time.
(o) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization.
(p) Restricting fugitive dust at spoil and coal transfer and loading points.
(q) Control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the director, or
(r) Other techniques as determined necessary by the director.
(4) Owners or operators shall submit a fugitive dust control plan to the director on a form provided by the director or another format approved by the director.
(a) Activities regulated by R307-309-10 shall not

commence before the fugitive dust control plan is approved by the director.

(b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-10.

(c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.

R307-309-11. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-309-11 and not by R307-309-6,7, 8, 9, and 10.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls shall include:

(a) Watering or;

(b) Chemical stabilization or;

(c) Synthetic covers or;

(d) Vegetative covers or;

(e) Wind breaks or;

(f) A combination of R307-309-11(2)(a)-(e);

(g) Minimizing the area of disturbed tailings;

(h) Restricting the speed of vehicles in and around the tailings operation; or

(h) Other equivalent methods or techniques which may be approvable by the director.

(3) Owners or operators shall submit a fugitive dust control plan to the director.

(a) Activities regulated by R307-309-11 shall not commence before the fugitive dust control plan is approved by the director.

(b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-11.

(c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.

R307-309-12. Record Keeping.

All sources subject to R307-309-5(2) and (3) shall maintain records demonstrating compliance with R307-309. These records shall be available to the director upon request.

R307-309-13. Compliance Schedule.

(1) All sources within the applicable portions of Salt Lake County, Utah County and the city of Ogden shall be in compliance with R307-309 upon the effective date of this rule.

(2) All sources within the remaining areas described in R307-309-3(1) shall be in compliance with R307-309-4 through 9 and R307-309-12 within 30 days of the effective date of this rule and shall be in compliance with R307-309-10 and 11 within 90 days of the effectiveness of this rule.

KEY: air pollution, fugitive dust

January 1, 2013	**19-2-101**
Notice of Continuation June 2, 2010	**19-2-104**
	19-2-109

R307. Environmental Quality, Air Quality.
R307-320. Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program.
R307-320-1. Purpose.

The purpose of this program is to reduce the number of measurable vehicle miles driven by employees commuting to and from work by requiring employers with work sites within ozone maintenance areas to implement strategies designed to reduce the employee drive-alone rate. An employer-based trip reduction program is authorized under 19-2-104(1)(h) and (2). It is a state implementation plan control strategy to reduce ambient ozone and is a potential contingency measure for carbon monoxide. An added benefit of the program is reducing the number of cars on increasingly congested roadways.

R307-320-2. Applicability.

(1) R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Davis or Salt Lake County.

(2) If the contingency requirements for carbon monoxide are triggered as outlined in Section IX.C.8.f of the State Implementation Plan, R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Ogden City.

R307-320-3. Definitions.

The following additional definitions apply to R307-320:

"Compressed Work Week" means any work schedule that eliminates at least one commute trip to a work site in each two week period.

"Drive-alone Rate" means the number of single-occupancy vehicles divided by the sum of single-occupancy vehicles, plus employees using mass transit, ridesharing, biking, walking, telecommuting or having credit for a compressed work week. The drive-alone rate calculation must be based on a typical Monday through Friday work week.

Drive-alone Rate = single-occupancy vehicles/(single-occupancy vehicles + mass transit users + rideshare participants + bikers + walkers + telecommuters + credit for compressed work week).

"Employee" means any person including persons employed by public universities or school districts, who works at or reports to a single work site at least three days per week for at least six months of the year.

"Employee Transportation Coordinator" means a person assigned the responsibility of developing, implementing, monitoring, tracking, and marketing the trip reduction plan for the employer.

"Employer" means federal, state, or local entity, or any other public department, district (including public universities or public school districts), or agency.

"Peak Travel Period" means the period beginning at 6 a.m. and ending at 10 a.m., Mondays through Fridays.

"Ridesharing" means transportation of more than one person for commute purposes in a vehicle.

"Single-occupancy Vehicles" means vehicles traveling to the work site with a driver and no passengers during the peak travel period.

"Target Drive-alone Rate" means a twenty percent reduction in the drive alone rate based on the 1990 census data for modes of travel in each county. The target drive-alone rate schedule is as follows:

TABLE
TARGET DRIVE-ALONE RATE SCHEDULE

	Davis County Drive-Alone Rate	Salt Lake County Drive-Alone Rate
From 1990 Census Data	0.76	0.77
1st year interim target drive-alone rate	0.72	0.73
2nd year interim target drive-alone rate	0.68	0.69
3rd year interim target drive-alone rate	0.67	0.67
4th year interim target drive-alone rate	0.65	0.65
5th year interim target drive-alone rate	0.63	0.64
6th year interim target drive-alone rate	0.61	0.62
Target drive-alone rate	0.61	0.62

"Telecommuting" means working at home or at a satellite work site, provided the employee does not use a single-occupancy vehicle to travel to the satellite work site.

"Trip Reduction Plan" means a set of strategies designed to reduce the drive-alone rate.

"Vehicle" means motorcycles and on-road vehicles powered by a gasoline or diesel internal combustion engine with nine or less seating positions for adults.

"Work Site" means a building and any group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of way.

R307-320-4. Employer Requirements.

(1) Each employer shall assign an employee trip reduction coordinator within 30 days after the effective date of R307-320.

(2) Each employer shall determine the drive-alone rate per work site on an annual basis for a typical Monday through Friday work week during the peak travel period. The drive-alone rate can be determined by one of the following methods in (a), (b) or (c) below.

(a) Information from an annual employee survey.

(i) The employer must use a standardized survey approved by the director. The survey shall ask the travel distance from the employee's home to the work site, what frequency and mode of transportation the employee used to get to work, and how often the employee participates in a telecommuting program or compressed work week schedule.

(ii) The employer shall administer the survey and shall capture, at a minimum, 75% of the employee population arriving at the work site during the peak travel period.

(b) Verifiable information, less than one year old of the submittal due date, from employer records including:

(i) employee work schedules;

(ii) employee participation in telecommuting schedules;

(iii) employee participation of mass transit;

(iv) employee participation in rideshare arrangements; and

(v) employee participation in non-vehicular transit.

(c) Another method of the employer's choosing, with written approval from the director.

(3) Each employer shall design and submit to the director an approvable trip reduction plan for each work site to meet the target drive-alone rate as specified by the target drive-alone rate schedule in R307-320-3.

(a) An employer may combine more than one work site in a trip reduction plan submittal.

(i) The target drive-alone rate for a multi-work site submission shall be a weighted average of the drive-alone rates for the individual work sites.

(ii) The employer may combine a trip reduction plan for any work site within the same county.

(b) The trip reduction plan submittal shall adhere to the following schedule:

(i) Submittal of a trip reduction plan shall be annually on

or before the anniversary of the initial due date.

(ii) For employers within ozone maintenance areas:

(A) The trip reduction plan must be submitted for approval within 90 days after the employer has been notified.

(B) If the employer has not been notified, then the trip reduction plan must be submitted no later than 360 days after the effective date of this rule.

(c) Materials and information submitted to the director shall include:

(i) A letter of commitment to fully implement an approved trip reduction plan signed by an authorized employee at the work site.

(ii) The name and signature of the employee transportation coordinator;

(iii) The drive-alone rate for the work site;

(iv) General work site information including name and address of organization; general layout of buildings and parking areas; location of major streets; location of nearby mass transit stops; number of total employees; number of employees arriving at the work site during peak travel periods; current and planned incentives, disincentives, and facilities available encouraging alternatives to single-occupant vehicle commuting; the type of activities conducted at the work site; and the time spent by the employee transportation coordinator in complying with the plan.

(d) A trip reduction plan designed to meet the target drive-alone rate schedule may include but is not limited to employer involvement in the following:

(i) Subsidized bus passes;

(ii) Rideshare matching programs;

(iii) Vanpool leasing programs;

(iv) Telecommuting programs;

(v) Compressed work week schedule programs and flexible work schedule programs;

(vi) Work site parking fee programs;

(vii) Preferential parking for rideshare participants;

(viii) Transportation for business related activities;

(ix) A guaranteed ride home program;

(x) On-site facility improvements;

(xi) Soliciting feedback from employees;

(xii) On-site daycare facilities;

(xiii) Coordination with local transit authorities for improved mass transit service and information on mass transit programs; and

(xiv) Recognition and rewards for employee participation.

(e) An approvable plan shall contain all the information required in R307-320-4. The director will approve or request revision of the trip reduction plan within 60 days of the plan submittal.

(4) Each employer shall implement a trip reduction plan approved by the director.

(5) Each employer shall inform employees of the trip reduction plan and options available to them for participation.

R307-320-5. Recordkeeping.

(1) The employer shall keep records of all documents necessary to prove compliance with and verify implementation of an approved trip reduction plan for at least two years from the plan approval date.

(2) Approved trip reduction plans shall be kept for five years from date of approval.

(3) Employer trip reduction records are subject to review by representatives of the director.

R307-320-6. Violations.

(1) The following are violations of this rule:

(a) failure to submit an approvable employer-based trip reduction plan as specified in R307-320-4;

(b) providing false information;

(c) failure to submit a revised employer-based trip reduction plan when requested by the director;

(d) failure to implement an approved trip reduction plan;

(e) failure to maintain records as specified in R307-320-5;

(f) upon receipt of the second disapproval notice and until a revised plan is submitted and approved, the employer is in violation of this rule.

(2) Failure to achieve the target drive-alone rate is not a violation of this rule.

R307-320-7. Exemptions.

(1) An employer with less than 100 employees at a work site is exempt from the requirements of this rule.

(2) An employer who has met the target drive-alone rate is exempt from requirements stated in R307-320-4(3) and (4). The employer must still submit the drive-alone rate information to the director annually.

(3) Employees using vehicles for commute purposes as part of their job responsibility for emergency response are exempt from the drive-alone rate determination if they do not have the option, because of employer policies, to participate in telecommuting programs, compressed work week schedules, or as a rideshare driver, as approved by the director.

(a) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(b) The director shall approve or deny a request for exemption within 90 days of application.

(4) Other exemptions may be granted on a case by case basis and must be approved by the director.

(a) The employer seeking exemption must be able to demonstrate that the trip reduction program causes an adverse impact on the employer's ability to provide services or creates an undue hardship.

(b) The employer may also seek an exemption by providing an alternative to the Trip Reduction Program that shows, at a minimum, for the work site seeking exemption, a reduction in oxides of nitrogen equivalent to that achieved by the Trip Reduction Program when implemented to the target drive-alone rate schedule in the table in R307-320-3. The employer shall provide all substantiating information and calculations.

(c) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(d) The director shall approve or deny a request for exemption within 90 days of application.

KEY: air pollution, motor vehicles, trip reduction
March 9, 2007 19-2-104(1)(h)
Notice of Continuation February 1, 2012

R307. Environmental Quality, Air Quality.
R307-326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries.
R307-326-1. Purpose.

The purpose of R307-326 is to establish Reasonably Available Control Technology (RACT), as required by section 182(b)(2)(A) of the Clean Air Act, for the control of hydrocarbon emissions from petroleum refineries that are located in ozone nonattainment and maintenance areas. The rule is based on federal control technique guidance documents.

R307-326-2. Applicability.

R307-326 applies to the owner or operator of any petroleum refinery located in any ozone nonattainment or maintenance area.

R307-326-3. Definitions.

The following additional definitions apply to R307-326.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Condenser" means any device that removes condensable vapors by a reduction in the temperature of captured gases.

"Control System" means any number of control devices, including condensers, that are designed and operated to reduce the quantity of VOCs emitted to the atmosphere.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Process Drain" means any drain used in a refinery complex on equipment that processes or transfers a VOC or a mixture of VOCs.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

R307-326-4. Vacuum Producing Systems.

The emission of noncondensable VOCs from the condensers, hot wells, or accumulators of vacuum producing systems shall be controlled by:

(1) piping the noncondensable vapors to a firebox or incinerator, or

(2) compressing the vapors and adding them to the refinery fuel gas, or

(3) other equally effective means provided the design and effectiveness of such means are documented and submitted to and approved by the director.

R307-326-5. Wastewater (Oil/Water) Systems.

Any wastewater separator handling VOCs shall be equipped with:

(1) covers and seals approved by the Director on all separators and forebays,

(2) lids or seals on all openings in covers, separators, and forebays. Such lids or seals shall be in the closed position at all times except when in actual use.

R307-326-6. Process Unit Turnaround.

The owner or operator of a petroleum refinery shall insure that a minimum of VOCs are emitted to the atmosphere during process unit turnarounds. The owner or operator shall develop and submit to the director for approval a procedure for minimizing VOC emissions during turnarounds. At a minimum the procedure shall provide for:

(1) venting of the process unit or vessel during depressurization and purging to a vapor recovery system, flare or firebox, and

(2) preventing discharge to the atmosphere of emissions of VOCs from a process unit or vessel until its internal pressure is 136 kPa (19.7 psia) or less; or

(3) an equally effective system provided the design and effectiveness of such system are documented and submitted to and approved by the director.

(4) keeping records of the following items:

(a) every date that each process unit or vessel is shut down;

(b) the approximate vessel VOC concentration when the VOCs were first discharged to the atmosphere; and

(c) the approximate total quantity of VOCs emitted to the atmosphere.

(5) maintaining records. The records required in (4) above shall be kept for at least two years and shall be made available for review by the director or the director's representative.

R307-326-7. Catalytic Cracking Units.

Flue gas produced by catalytic cracker catalyst regeneration units shall be vented to a waste heat boiler or a process heater firebox, or incinerated, or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the director.

R307-326-8. Safety Pressure Relief Valves.

All safety pressure relief valves handling organic material shall be vented to a flare, firebox, or vapor recovery system, or controlled by the inspection, monitoring, and repair requirements described in R307-326-9.

R307-326-9. Monitoring of Leaks from Petroleum Refinery Equipment.

(1) The owner or operator of a petroleum refinery complex shall develop and conduct a VOC monitoring program and shall follow the recording, reporting, and operating requirements consistent with R307-326-9. The monitoring program shall be submitted 30 days prior to start up of the petroleum refinery complex or as determined necessary by the director.

(2) Any affected component within a petroleum refinery complex found to be leaking shall be repaired and retested as soon as practicable, but not later than fifteen (15) days after the leak is detected. A leaking component is defined as one that has a concentration of VOCs exceeding 10,000 parts per million by volume (ppmv) when tested by a VOC detection instrument at the leak source in the manner described in 40 CFR 60, Appendix A, Reference Method 21, using methane or hexane as the calibration gas. Components not subject to New Source Performance Standards Subpart GGG shall use methane or hexane as calibration gas, provided a relative response factor for each individual instrument is determined for the calibration gas used. Those leaks that cannot be repaired until the unit is shut down for turnaround shall be identified with a tag and recorded as per (6) below and shall be reported as per (7) below. The Director, in coordination with the refinery owner or operator, may require early unit turnaround based on the number and severity of tagged leaks awaiting turnaround.

(3) Monitoring Requirements.

(a) In order to ensure that all existing VOC leaks are identified and that new VOC leaks are located as soon as practicable, the refinery owner or operator shall perform necessary monitoring using visual observations when specified

or the method described in 40 CFR 60, Appendix A, Reference Method 21, as follows:

(i) Monitor at least one time per year (annually) all pump seals, valves in liquid service, and process drains;

(ii) Monitor four times per year (quarterly) all compressor seals, valves in gaseous service, and pressure relief valves in gaseous service;

(iii) Monitor visually 52 times per year (weekly) all pump seals;

(iv) Monitor within 24 hours (with a portable VOC detection device) or repair within 15 days any pump seal from which liquids are observed dripping;

(v) Monitor any relief valve within 24 hours after it has been vented to the atmosphere;

(vi) Monitor immediately after repair any component that was found leaking;

(vii) For all other valves considered "unsafe-to-monitor" or inaccessible during an annual inspection, the owner or operator shall document to the director the number of valves considered "unsafe-to-monitor" or inaccessible, the dangers involved or reasons for inaccessibility, the location of these valves, and the procedures that the owner or operator shall follow to ensure that the valves do not leak. The documentation for each calendar year shall be submitted for approval to the director 15 days after the last day of each calendar year. At a minimum, the inaccessible valves shall be monitored at least once per year (annually).

(b) For the purpose of R307-326, gaseous service for pipeline valves and pressure relief valves is defined as the VOCs being gaseous at conditions that prevail in the components during normal operations. Pipeline valves and pressure relief valves in gaseous service and other components subject to leaks shall be noted or marked so that their location within the refinery complex is obvious to the refinery operator performing the monitoring and to the State of Utah, Division of Air Quality.

(4) Exemptions. The following are exempt from the monitoring requirements of (3) above:

(a) Pressure relief devices that are connected to an operating flare header, firebox, or vapor recovery devices, storage tank valves, and valves that are not externally regulated;

(b) Refinery equipment containing a stream composition less than 10 percent by weight VOCs; and

(c) Refinery equipment containing natural gas supplied by a public utility as defined by the Utah Public Service Commission.

(5) Alternate Monitoring Methods and Requirements.

(a) If at any time after two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery can demonstrate that modifications to (3) above are in order, he may apply in writing to the Air Quality Board for a variance from the requirements of (3) above.

(b) This submittal shall include data that have been developed to justify the modification to (3) above. As a minimum, the submittal should contain the following information:

(i) the name and address of the company;

(ii) the name and telephone number of the responsible company representative;

(iii) a description of the proposed alternate monitoring procedures; and

(iv) a description of the proposed alternate operational or equipment controls.

(6) Recording Requirements. Identified leaks shall be noted and affixed with a readily visible and weatherproof tag bearing the identification of the leak and the date the leak was detected. The tag shall remain in place until the leaking component is repaired. The presence of the leak shall also be noted in a log maintained by the operator or owner of the refinery. The log shall contain, at a minimum, the name of the process unit where the component is located, the type of component, the tag number, the date the leak is detected, the date repaired, and the date and instrument reading when the recheck of the component is made. The log should also indicate those leaks that cannot be repaired until turnaround, and summarize the total number of components found leaking. The operator or owner of the refinery complex shall retain the leak detection log for two years after the leak has been repaired and shall make the log available to the director upon request.

(7) Reporting Requirements. The operator or owner of a petroleum refinery complex shall submit a report to the director by the 15th day of January, April, July, and October of each year listing the total number of components inspected, all leaks that have been located during the previous 3 calendar months but not repaired within 15 days, all leaking components awaiting unit turnaround and the total number of components found leaking. In addition, the refinery operator or owner shall submit a signed statement with each report that all monitoring has been performed as stipulated in R307-326-9.

(8) Additional Requirements. Any time a valve, with the exception of safety pressure relief valves, is located at the end of a pipe or line containing VOCs, the end of the line shall be sealed with one of the following: a second valve, a blind flange, a plug or a cap. This sealing device shall only be removed when the line is in use for sampling.

R307-326-10. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-326, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-326 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, VOCs and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-326-11. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, refinery, gasoline, ozone
March 9, 2007 19-2-101
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R307. Environmental Quality, Air Quality.
R307-327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.
R307-327-1. Purpose.

The purpose of R307-327 is to establish Reasonably Available Control Technology (RACT), as required by section 182(2)(A) of the Clean Air Act, for petroleum refineries and petroleum liquid storage facilities that are located in any ozone nonattainment or maintenance area. The rule is based on federal control technique guidance documents.

R307-327-2. Applicability.

R307-327 applies to the owner or operator of any petroleum refinery or petroleum liquid storage facility located in any ozone nonattainment or maintenance area.

R307-327-3. Definitions.

The following additional definitions apply to R307-327:

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

R307-327-4. General Requirements.

(1) Any existing stationary storage tank, reservoir or other container with a capacity greater than 40,000 gallons (150,000 liters) that is used to store volatile petroleum liquids with a true vapor pressure greater than 10.5 kilo pascals (kPa) (1.52 psia) at storage temperature shall be fitted with control equipment that will minimize vapor loss to the atmosphere. Storage tanks, except those erected before January 1, 1979, which are equipped with external floating roofs, shall be fitted with an internal floating roof that shall rest on the surface of the liquid contents and shall be equipped with a closure seal or seals to close the space between the roof edge and the tank wall, or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the director. The owner or operator shall maintain a record of the type and maximum true vapor pressure of stored liquid.

(2) The owner or operator of a petroleum liquid storage tank not subject to (1) above, but containing a petroleum liquid with a true vapor pressure greater than 7.0 kPa (1.0 psia), shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure.

R307-327-5. Installation and Maintenance.

(1) The owner or operator shall ensure that all control equipment on storage vessels is properly installed and maintained.

(a) There shall be no visible holes, tears or other openings in any seal or seal fabric and all openings, except stub drains, shall be equipped with covers, lids, or seals.

(b) All openings in floating roof tanks, except for automatic bleeder vents, rim space vents, and leg sleeves, shall provide a projection below the liquid surface.

(c) The openings shall be equipped with a cover, seal, or lid.

(d) The cover, seal, or lid is to be in a closed position at all times except when the device is in actual use.

(e) Automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents shall be set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting.

(f) Any emergency roof drain shall be provided with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the area of the opening.

(2) The owner or operator shall conduct routine inspections from the top of the tank for external floating roofs or through roof hatches for internal floating roofs at six month or shorter intervals to insure there are no holes, tears, or other openings in the seal or seal fabric.

(a) The cover must be uniformly floating on or above the liquid and there must be no visible defects in the surface of the cover or petroleum liquid accumulated on the cover.

(b) The seal(s) must be intact and uniformly in place around the circumference of the cover between the cover and tank wall.

(3) A close visible inspection of the primary seal of an external floating roof is to be conducted at least once per year from the roof top unless such inspection requires detaching the secondary seal, which would result in damage to the seal system.

(4) Whenever a tank is emptied and degassed for maintenance, an emergency, or any other similar purpose, a close visible inspection of the cover and seals shall be made.

(5) The director must be notified 7 days prior to the refilling of a tank that has been emptied, degassed for maintenance, an emergency, or any other similar purpose. Any non-compliance with this rule must be corrected before the tank is refilled.

R307-327-6. Retrofits for Floating Roof Tanks.

(1) Except where specifically exempted in (3) below, all existing external floating roof tanks with capacities greater than 950 barrels (40,000 gals) shall be retrofitted with a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary seal) if:

(a) The tank is a welded tank, the true vapor pressure of the contained liquid is 27.6 kPa (4.0 psia) or greater and the primary seal is one of the following:

(i) A metallic type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid-filled seal, or

(ii) Any other primary seals that can be demonstrated equivalent to the above primary seals.

(b) The tank is a riveted tank, the true vapor pressure of the contained liquid is 10.5 kPa (1.5 psia) or greater, and the primary seal is as described in (a) above.

(c) The tank is a welded or riveted tank, the true vapor pressure of the contained liquid is 10.5 kPa (1.5 psia) or greater and the primary seal is vapor-mounted. When such primary seal closure device can be demonstrated equivalent to the primary seals described in (a) above, these processes apply.

(2) The owner or operator of a storage tank subject to this rule shall ensure that all the seal closure devices meet the following requirements:

(a) There shall be no visible holes, tears, or other openings in the seals or seal fabric.

(b) The seals must be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall.

(c) For vapor mounted primary seals, the accumulated area of gaps between the secondary seal and the tank wall shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 in^2 per ft. of tank diameter) and the width of any gap shall not exceed 1.27 cm (1/2 in.). The owner or operator shall measure the secondary seal gap annually and make a record of the measurement.

(3) The following are specifically exempted from the requirements of (1) above:

(a) External floating roof tanks having capacities less than 10,000 barrels (420,000 gals) used to store produced crude oil and condensate prior to custody transfer.

(b) A metallic type shoe seal in a welded tank that has a secondary seal from the top of the shoe seal to the tank wall (a

shoe mounted secondary seal).

(c) External floating roof tanks storing waxy, heavy pour crudes.

(d) External floating roof tanks with a closure seal device or other devices installed that will control volatile organic compounds (VOC) emissions with an effectiveness equal to or greater than the seals required in (1) above. It shall be the responsibility of the owner or operator of the source to demonstrate the effectiveness of the alternative seals or devices to the director. No exemption under (3) shall be granted until the alternative seals or devices are approved by the director.

R307-327-7. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-327, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-327 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, VOCs and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-327-8. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, petroleum, gasoline, ozone
March 9, 2007 19-2-104(1)(a)
Notice of Continuation February 1, 2012

R307. Environmental Quality, Air Quality.
R307-328. Gasoline Transfer and Storage.
R307-328-1. Purpose.

The purpose of R307-328 is to establish Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline cargo tank and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

R307-328-2. Applicability.

(1) Gasoline Cargo Tanks. R307-328 applies to the owner or operator of any gasoline cargo tank that loads or unloads gasoline in Utah.

(2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage container, or service station located in Utah that dispenses 10,000 gallons or more in any one calendar month.

(3) This rule applies to all gasoline cargo tanks and gasoline dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

(4) All references to 40 CFR in R307-328 shall mean the version that is effective as of the date referenced in R307-101-3.

R307-328-3. Definitions.

The following additional definitions apply to R307-328.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Gasoline cargo tank" means gasoline cargo tank as defined in 40 CFR 63.421 that is hereby incorporated by reference.

R307-328-4. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles.

(1) No person shall load or permit the loading of gasoline into any gasoline cargo tank unless the emissions from such vehicle are controlled by use of a vapor collection and control system and submerged or bottom filling. RACT shall be required and in no case shall vapor emissions to the atmosphere exceed 0.640 pounds per 1,000 gallons transferred.

(2) Such vapor collection and control system shall be properly installed and maintained.

(3) The loading device shall not leak.

(4) The loading device shall utilize the dry-break loading design couplings and shall be maintained and operated to allow no more than an average of 15 cc drainage per disconnect for 5 consecutive disconnects.

(5) All loading and vapor lines shall be equipped with fittings which make a vapor tight connection and shall automatically close upon disconnection to prevent release of the organic material.

(6) A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307-328-4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling or alternate equivalent methods. The emission limitation is based on operating procedures and equipment specifications using Reasonably Available Control Technology as defined in EPA documents EPA 450/2-77-026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," and EPA-450/2-77-035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the director.

(7) Hatches of gasoline cargo tanks shall not be opened at any time during loading operations except to avoid emergency situations or during emergency situations. Pressure relief valves on storage tanks and gasoline cargo tanks shall be set to release at the highest possible pressure, in accordance with State or local fire codes and National Fire Prevention Association guidelines. Pressure in the vapor collection system shall not exceed the gasoline cargo tank pressure relief setting.

(8) Each owner or operator of a gasoline storage or dispensing installation shall conduct testing of vapor collection systems used at such installation and shall maintain records of all tests for no less than two years. Testing procedures of vapor collection systems shall be approved by the director and shall be consistent with the procedures described in the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

(9) Semi-annual testing shall be conducted and records maintained of such test. The frequency of tests may be altered by the director upon submittal of documentation which would justify a change.

(10) The vapor collection and vapor processing equipment shall be designed and operated to prevent gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and prevent vacuum from exceeding 6 inches of water. During testing and monitoring, there shall be no reading greater than or equal to 100 percent of the lower explosive limit measured at 1.04 inches around the perimeter of a potential leak source as detected by a combustible gas detector. Potential leak sources include, but are not limited to, piping, seals, hoses, connections, pressure or vacuum vents, and vapor hoods. In addition, no visible liquid leaks are permitted during testing or monitoring.

R307-328-5. Stationary Source Container Loading.

(1) No person shall transfer or permit the transfer of gasoline from any gasoline cargo tank into any stationary storage container with a capacity of 250 gallons or greater unless such container is equipped with a submerged fill pipe that extends to no more than twelve inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and no more than six inches form the bottom of the storage tank for fill pipes installed after November 9, 2006, and at least 90 percent of the gasoline vapor, by weight, displaced during the filling of the stationary storage container is prevented from being released to the atmosphere. This requirement shall not apply to:

(a) the transfer of gasoline into any stationary storage container of less than 550 gallons used primarily for the fueling of implements of husbandry if such container is equipped with a permanent submerged fill pipe;

(b) the transfer of gasoline into any stationary storage container having a capacity of less than 2,000 gallons which was installed prior to January 1, 1979, if such container is equipped with a permanent submerged fill pipe;

(c) the transfer of gasoline to storage tanks equipped with floating roofs or their equivalent which have been approved by the director.

(2) The 90 percent performance standard of the vapor control system shall be based on operating procedures and equipment specifications. The design effectiveness of such equipment and the operating procedure must be documented and submitted to and approved by the director.

(3) Each owner or operator of a gasoline storage tank or the owner or operator of the gasoline cargo tank subject to (1) above shall install vapor control equipment, which includes, but

is not limited to:

(a) vapor return lines and connections sufficiently free of restrictions to allow transfer of vapor to the gasoline cargo tank or to the vapor control system, and to achieve the required recovery;

(b) a means of assuring that the vapor return lines are connected to the gasoline cargo tank, or vapor control system, and storage tank during tank filling;

(c) restrictions in the storage tank vent line designed and operated to prevent:

(i) the release of gasoline vapors to the atmosphere during normal operation; and

(ii) gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and vacuum from exceeding 6 inches of water.

R307-328-6. Gasoline Cargo Tank.

(1) Gasoline cargo tanks must be designed and maintained to be vapor tight during loading and unloading operations as well as during transport, except for normal pressure venting required under United States Department of Transportation Regulations.

(2) The design of the vapor recovery system shall be such that when the gasoline cargo tank is connected to an approved storage tank vapor recovery system or loading terminal, 90% vapor recovery efficiencies are realized. The connectors of the gasoline cargo tanks shall be compatible with the fittings on the fill pipes and vapor vents at the storage containers and gasoline loading terminals where the gasoline cargo tank will service or be serviced. Adapters may be used to achieve compatibility.

(3) No person shall knowingly allow the introduction of gasoline into, dispensing of gasoline from, or transportation of gasoline in a gasoline cargo tank that does not meet the leak tight testing requirements of R307-328-7.

(4) A vapor-laden gasoline cargo tank may be refilled only at installations equipped to recover, process or dispose of vapors. Gasoline cargo tanks that only service locations with storage containers specifically exempted from the requirements of R307-328-5 need not be retrofitted to comply with R307-328-6(1)-(3) above, provided such gasoline cargo tanks are loaded through a submerged fill pipe or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the director.

R307-328-7. Vapor Tightness Testing.

(1) Gasoline cargo tanks and their vapor collection systems shall be tested annually for leakage in accordance with the test methods and vapor tightness standards in 40 CFR 63.425(e) which are hereby incorporated by reference.

(2) Each owner or operator of a gasoline cargo tank shall have documentation in their possession demonstrating that the gasoline cargo tank has passed the annual test in (1) above within the preceding twelve months.

(3) The vapor tightness documentation described in (2), as well as record of any maintenance performed, shall be retained by the owner or operator of the gasoline cargo tank for a two year period and be available for review by the director or the director's representative.

(4) The owner or operator of a railcar gasoline cargo tank may use the testing, recordkeeping, and reporting requirements in 40 CFR 63.425(i), that is hereby incorporated by reference, as an alternative to the annual testing requirements in (1) through (3) above.

R307-328-8. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-328, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-328 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, volatile organic compounds and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-328-9. Compliance Schedule.

(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.

(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:

(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.

(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.

(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.

(3) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the director. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.

(4) A request for an extension must be documented and contain valid reasons why a facility will not able to meet the phase-in schedule indicated in (2)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to this rule at the earliest possible date, but no later than April 30, 2011.

(5) The vapor tightness testing standard in R307-328-7(1) shall apply to tests conducted after June 7, 2011. All gasoline cargo tanks shall be tested using the vapor tightness testing standard in R307-328-7(1) by June 7, 2012.

R307-328-10. Authorized Contractors.

(1) All modifications performed on underground storage tanks regulated by Title 19, Chapter 6, Part 4, the Utah Underground Storage Tank Act, to bring them into compliance with R307-328, shall be performed by contractors certified

under R311-201.

KEY: air pollution, gasoline transport, ozone
June 7, 2011 19-2-101
Notice of Continuation February 1, 2012 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-335. Degreasing and Solvent Cleaning Operations.
R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing and solvent cleaning operations.

R307-335-2. Applicability.

R307-335 applies to all degreasing or solvent cleaning operations that use VOCs and that are located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011).

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container)divided by the width of the degreaser.

"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

(a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),

(b) The solvent is agitated, or

(c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

(a) Freeboard that gives a freeboard ratio greater than 0.7;

(b) Water cover if the solvent is insoluble in and heavier than water); or

(c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. Conveyorized Degreasers.

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

R307-335-7. Industrial Solvent Cleaning.

(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coat and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials and fiberglass boat manufacturing materials.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day, before controls, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

(a) Covering open containers; and

(b) Storing used applicators and shop towels in closed fire proof containers.

(3) Owners or operators of industrial solvent cleaning operations shall limit VOC emissions by either:

(a) Using cleaning solutions with vapor pressure less than or equal to eight millimeters of mercury (mm Hg) at 20 degrees C;

(b) Using solvents with a VOC content of 0.42 pounds per gallon or less; or

(c) Installing an emission control system designed to have an overall control efficiency of at least 85%.

R307-335-8. Emission Control Systems.

(1) The owner or operator of a control device shall maintain certification from the manufacturer that the emission control system will attain at least 85% overall efficiency performance and make the certification available to the director upon request.

(2) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations to maintain at least 85% overall efficiency performance. The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-335-9. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, records of the solvent VOC content applied and the physical characteristics that demonstrate compliance with R307-335.

R307-335-10. Compliance Schedule.

(1) All sources within Salt Lake and Davis counties shall be in compliance with R307-335-3 through R307-335-6 and R307-335-8 upon the effective date.

(2) All other sources defined in R307-335-2 shall be in compliance with all sections of this rule by September 1, 2013.

KEY: air pollution, degreasing, solvent cleaning
January 1, 2013 19-2-104(1)(a)
Notice of Continuation February 1, 2012

R307. Environmental Quality, Air Quality.
R307-341. Ozone Nonattainment and Maintenance Areas: Cutback Asphalt.
R307-341-1. Purpose.

This rule establishes reasonably achievable control technology (RACT) requirements for the use or application of cutback asphalt in ozone nonattainment and maintenance areas.

R307-341-2. Applicability.

R307-341 applies to any person who uses or applies asphalt in any ozone nonattainment or maintenance area.

R307-341-3. Definitions.

The following additional definitions apply to R307-341:

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material, either solid, semisolid or liquid in consistency, of which the main constituents are bitumens that occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate that is evenly coated with hot asphalt cement.

"Cutback Asphalt" means any asphalt that has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

R307-341-4. Limitations on Use of Cutback Asphalt.

No person shall cause, allow, or permit the use or application of cutback asphalt, or emulsified asphalt containing more than 7 percent oil distillate, as determined by ASTM distillation test D-244, except as provided below:

(1) Where the use or application commences on or after October 1 of any year and such use or application is completed by April 30 of the following year;

(2) Where long-life (longer than 1 month) stockpile storage of patch mix is demonstrated to the director to be necessary;

(3) Where the asphalt is to be used solely as a penetrating prime coat;

(4) Where the user can demonstrate that there are no emissions of volatile organic compounds from the asphalt under conditions of normal use;

(5) Where the use or application is for the paving of parking lots smaller than 300 parking stalls.

R307-341-5. Recordkeeping.

Any person subject to R307-341 shall keep records for at least two years of the types and amounts of cutback or emulsified asphalt used, the amounts of solvents added, and the location where the asphalt is applied. The records shall be made available to the director upon request.

R307-341-6. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, emission controls, asphalt, solvent
January 16, 2007 19-2-104(1)(a)
Notice of Continuation February 1, 2012

R307. Environmental Quality, Air Quality.
R307-356. Appliance Pilot Light.
R307-356-1. Purpose.

The purpose of R307-356 is to reduce volatile organic compound (VOC) emissions from natural gas-fired fan-type central furnaces, gas fireplaces, and gas stoves.

R307-356-2. Applicability.

R307-356 applies to manufacturers, distributors, retailers, and installers of residential, institutional, and commercial natural gas-fired fan-type central furnaces, fireplaces, stoves, and cooktops, and applies in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

R307-356-3. Exemptions.

The requirements of R307-356 shall not apply to:

(1) Units using a fuel other than natural gas;

(2) Units using an intermittent pilot ignition;

(3) Units used in recreational vehicles; or

(4) Units manufactured and sold in Box Elder, Davis, Cache, Weber, Salt Lake, and Utah counties that are for shipment and use outside of those counties.

R307-356-4. Definitions.

The following additional definitions apply to R307-356:

"Fan type central furnace" means a self-contained space heater providing for circulation of heated air at pressures other than atmospheric through ducts more than ten inches in length that have rated heat input capacity of less than 175,000 BTU per hour and that require single phase electric supply.

"Fireplace" means a vented or non-vented gas appliance, including freestanding, recessed, zero clearance, or a fireplace insert, that simulates a solid fuel fireplace.

"Rated heat input capacity" means the gross heat input capacity specified on the nameplate of either the unit or the burner.

"Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.

R307-356-5. General Provisions.

After January 1, 2014, no person shall manufacture for sale, distribute, sell, offer for sale, or install any natural gas-fired fan-type central furnaces, gas fireplaces, or gas stoves that require the use of a continuous pilot light for ignition.

KEY: pilot lights, furnaces, fireplaces, stoves
January 1, 2013 **19-2-101**
19-2-104

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The 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.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A ten-day public comment period will be established.

(ii) The public comment period in (i) above will be increased to 30 days for any source that is:

(A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,

(B) subject to the requirements of R307-406, Visibility,

(C) subject to the requirements of R307-415, Operating Permit Requirements;

(D) a synthetic minor source in accordance with R307-415-4(6);

(E) located in a nonattainment area or a maintenance area for any pollutant; or

(F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii).

(iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the

director:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii) above.

(v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of

less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the director. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air

stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The director shall review the analysis. The analysis and the director's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

R307-401-20. Relaxation of Limitations.

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

KEY: air pollution, permits, approval orders, greenhouse gases

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Notice of Continuation June 6, 2012 19-2-108

R307. Environmental Quality, Air Quality.
R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.
R307-403-1. Definitions.

The following additional definition applies to R307-403:

"Lowest Achievable Emission Rate (LAER)" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

R307-403-2. Emission Limitations.

Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307 and the State Implementation Plan incorporated by reference under R307-110. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements in R307-403-4, 5, and 6. The emission limitations shall be stated as a condition of the approval order.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the director to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the director as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

(2) If the director finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the director shall approve the proposed source if and only if:

(a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(b) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the director finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

R307-403-4. Offsets: General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

R307-403-5. Offsets: PM10 Nonattainment Areas.

(1) New sources which have a potential to emit, or

modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

R307-403-6. Offsets: Ozone Nonattainment Areas.

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

R307-403-7. Offsets: Baseline.

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

R307-403-8. Offsets: Banking of Emission Offset Credit.

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51, Appendix S. To preserve banked emission reductions, the director must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

R307-403-9. Construction in Stages.

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

KEY: air quality, nonattainment*, offset*
May 6, 1999 **19-2-104**
Notice of Continuation June 6, 2012 **19-2-108**

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).
R307-405-1. Purpose.

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2011.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(b) "Reviewing Authority" means the director.

(c)(i) The term "Administrator" shall be changed to "director" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),
(B) 40 CFR 52.21(b)(37)(i),
(C) 40 CFR 52.21(b)(43),
(D) 40 CFR 52.21(b)(48)(ii)(c),
(E) 40 CFR 52.21(b)(50)(i),
(F) 40 CFR 52.21(l)(2),
(G) 40 CFR 52.21(p)(2), and
(H) 40 CFR 51.166(q)(2)(iv).

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(e) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (d) through (e) of this section.

(b) For purposes of paragraphs (c) through (e) of this section, the term "tons per year (tpy) CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO2e.

(c) The term "emissions increase" as used in paragraphs (d) through (e) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO2e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO2e or more; and,

(e) Beginning July 1, 2011, in addition to the provisions in paragraph (d) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO2e or more.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,

(b) Bryce Canyon National Park,

(c) Canyonlands National Park,

(d) Capitol Reef National Park, and

(e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g), that is hereby incorporated by reference.

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d) are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

(a) impact a Class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h) are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

R307-405-11. Control Technology Review.

The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l) are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o) are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p) are hereby incorporated by reference.

(2) The director will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2) are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

The provisions of 40 CFR 52.21(r) are hereby incorporated

by reference.

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The director shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.

(2) (a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the director must identify them in either the Utah SIP or an order. The director will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area, greenhouse gases
February 2, 2012 19-2-104
Notice of Continuation February 5, 2009

R307. Environmental Quality, Air Quality.
R307-406. Visibility.
R307-406-1. Definitions.

The following additional definition applies throughout R307-406:

"Adverse Impact on Visibility" means for purposes of R307-406, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the mandatory Class I area, and the frequency and timing of natural conditions that reduce visibility.

R307-406-2. Source Review.

(1) The director shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under R307-401, the director shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The director shall take into consideration as a part of the review and control requirements:

(a) the costs of compliance;

(b) the time necessary for compliance;

(c) the energy usage and conservation;

(d) the non air quality environmental impacts of compliance;

(e) the useful life of the source; and

(f) the degree of visibility improvement which will be provided as a result of control.

(2) In determining visibility impact by a major new source or major modification, the director shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

(3) The director shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

R307-406-3. Notification of Federal Land Managers.

(1) The director shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-401-4 of these regulations, on the proposal. The director shall consider, as a part of the new or modified source review required by R307-406, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the director within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the director determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the director shall not issue the approval order. Where the director determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the director will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

(2) Where the director receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the director will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

R307-406-4. Adverse Impact.

If the analysis required by R307-406-2 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the director may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the director.

R307-406-5. Consideration in Review.

The director will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

R307-406-6. Audits for Permitting.

The director may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

KEY: air pollution, visibility*, permits
September 15, 1998 19-2-104
Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.
R307-410. Permits: Emissions Impact Analysis.
R307-410-1. Purpose.

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) effective July 1, 2005 are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the director.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2005, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the director may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the director.

TABLE 1

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	100 tons per year
lead	0.6 tons per year

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The director may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The director will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the director approves.

(C) In making a final determination, the director will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2005, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission

threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The director may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV- TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air contaminant to include determinations made under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The director may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6.

KEY: air pollution, modeling, hazardous air pollutant, stack height
June 16, 2006 19-2-104
Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.
R307-414. Permits: Fees for Approval Orders.
R307-414-1. Applicability and Definitions.

The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to R307-401 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

R307-414-2. Bills for Service.

(1) The director will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

(2) The director shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

KEY: air pollution, fee
December 7, 2000 19-2-104(3)(o)
Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the director offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the director that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the director proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the director;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon

dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO2 equivalent emissions.

(b) The term "tpy CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98--Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96), and summing the resultant value for each to compute a tpy CO2e.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

(3) Emissions units and Part 70 sources.

(a) For major sources, the director shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the director shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the director to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The director shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the director notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the director determines that additional information is necessary to evaluate or take final action on that application, the director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the

application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the director.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The director shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the director shall establish a due date for permit applications from all area sources in that source category.

(C) The director shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the director for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the director may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the director shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine

the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the director, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the director.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment

such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The director may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The director may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the director elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the director shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that

include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the director. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The director may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the director consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the director. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The director shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the director or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the director. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the director;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the director may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the director;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the director may require.

R307-415-6d. Permit Content: General Permits.

(1) The director may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the director shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the director for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The director may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the director may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the director shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the director to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The director has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the director has complied with the requirements for public participation under R307-415-7i;

(c) The director has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the director shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The director shall promptly provide notice to the applicant of whether the application is complete. Unless the director requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The director shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The director shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the director takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the director any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the director fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the

terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the director and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the director in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the director shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the director and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the director shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the director and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the director and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the director consistent with the following:

(a) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to

take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the director designates any such permit revisions as having been made pursuant to this paragraph. The director shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The director shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The director shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the director shall notify EPA and affected States of the requested permit modification. The director promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The director may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the director that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the director's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the director shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the director may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such

procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the director shall notify EPA and affected States of the requested permit modifications. The director shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the director shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The director shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The director or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the director determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the director at least 30 days in advance of the date that the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The director shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The director may request a 90-day extension if a new or revised permit application is necessary or if the director determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The director shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the director, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the director; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the director that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The director shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The director shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The director shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The director shall provide to EPA a copy of each

permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the director to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the director may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The director shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The director shall give notice of each draft permit to any affected State on or before the time that the director provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The director, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the director to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the director's reasons for not accepting any such recommendation. The director is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the director shall not issue the permit. If the director fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the director has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the director may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The director shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the director in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the director that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The director may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The director may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, greenhouse gases, operating permit, emission fees
March 7, 2012 19-2-109.1
Notice of Continuation June 6, 2012 19-2-104

R307. Environmental Quality, Air Quality.
R307-417. Permits: Acid Rain Sources.
R307-417-1. Part 72 Requirements.

The provisions of 40 CFR Part 72, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

R307-417-2. Part 75 Requirements.

The provisions of 40 CFR Part 75, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 75 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 75 shall apply and take precedence.

R307-417-3. Part 76 Requirements.

The provisions of 40 CFR Part 76, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 76 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 76 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority, operating permit
February 8, 2008 19-2-101
Notice of Continuation June 6, 2012 19-2-104(3)(q)

R307. Environmental Quality, Air Quality.
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.
R307-420-1. Purpose.

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

The following additional definitions apply to R307-420:

"Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining 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 ore 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 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

(1) for volatile organic compounds, 25 tons per year,
(2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the director may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the director may issue an approval order to construct, modify, or relocate under R307-401.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant", which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset*
May 6, 1999 **19-2-104**
Notice of Continuation June 6, 2012 **19-2-108**

R307. Environmental Quality, Air Quality.
R307-424. Permits: Mercury Requirements for Electric Generating Units.
R307-424-1. Purpose and Applicability.

The purpose of R307-424 is to regulate mercury emissions from any coal-fired electric generating unit (EGU). R307-424 applies to any coal-fired electric generating unit as defined in 40 CFR 60.24.

R307-424-2. Part 70 Permit.

Sources meeting the applicability requirements of R307-424-1 above, and also meeting the applicability requirements of R307-415-4, are required to obtain a mercury (Hg) budget permit in accordance with R307-224-2(1)(a).

R307-424-3. Offset Requirement: Mercury.

Sources meeting the applicability requirements of R307-424-1 above and making application for an approval order under R307-401 shall, in addition to any other requirement for obtaining such approval order, obtain an enforceable offset for any potential increase in mercury emissions in accordance with the following:

(1) The permitted increase in mercury emissions, considering the application of any control method or device, shall be offset by mercury emission credits at a ratio of 1 to 1.1 respectively.

(2) The averaging period for such determinations shall be a 12-month period.

(3) Mercury emission credits must be obtained from an EGU located within the State of Utah, excluding any EGU located on Indian lands within the State.

(4) To preserve reductions in mercury emissions as credits for use in offsetting potential increases, the director must identify such credits in an order issued pursuant to R307- 401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reduction credits, and to record any transfers of, or liens on, these rights.

(5) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable.

(6) The quantity of mercury emission reductions to be used for credit will be determined in accordance with 40 CFR part 75, or will be based on the best available data reported to the director. To the extent that the EGU has been subject to the requirements of part 75, mercury emissions data shall be the average of the 3 highest annual amounts over the most recent 5-year period. Mercury emission reductions made prior to December 31, 1999 shall not be creditable for such purpose.

(7) R307-424-3 shall not apply to any EGU for which a valid approval order was issued prior to November 17, 2006.

R307-424-4. Emission Rates.

(1) By no later than December 31, 2012, the owner or operator of any EGU with an input heat capacity in excess of 1,500 MMbtu per hour and having commenced operations prior to November 17, 2006, shall demonstrate compliance with at least one of the following:

(a) A maximum emission rate of 6.50×10^{-7} pounds mercury per million btu heat input; or

(b) A minimum of 90% control of total mercury emissions.

(2) Compliance with (1) above shall be based on an annual averaging period beginning January 1 and ending December 31.

(a) Beginning January 1, 2013, compliance shall be determined using the monitoring and recordkeeping requirements incorporated under R307-224-2. Upon completion of each year's fourth quarterly report, an assessment shall be made for the entire calendar year and reported to the director within 30 days.

(b) Where it is necessary to determine the mercury content of the coal or coals burned, the owner or operator shall use the appropriate ASTM method, and shall measure at least one representative sample each month. Records of such testing shall be kept for a period of at least five years, and shall be made available to the director upon request.

(3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in (1) above, despite proper operation of the unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization, the owner or operator may petition the director for a modification to the compliance limitation for the unit in accordance with R307-401.

(a) Such petition shall be received no later than the date upon which the compliance assessment required under (2)(a) above is due.

(b) Any such determination by the director will be made on a case-by-case basis, taking into consideration energy, environmental and economic impacts and other costs. It will be based on the best information and analytical techniques available.

KEY: air pollution, electric generating unit, mercury

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	19-2-104(3)(e)
	40 CFR 60.24

R307. Environmental Quality, Air Quality.
R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions.
R307-840-1. Purpose and Applicability.

(1) Rule R307-840, R307-841, and R307-842 establish procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and renovations, and work practice standards for performing such activities. These rules also require that, except as outlined in R307-840-1(2), all lead-based paint activities and renovations, as defined in these rules, must be performed by certified individuals and firms.

(2) R307-840, R307-841, and R307-842 apply to all individuals and firms who are engaged in lead-based paint activities and renovations as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) R307-840, R307-841, and R307-842 identify lead-based paint hazards. The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(4) R307-840, R307-841, and R307-842 do not require the owner of the property or properties subject to these rules to evaluate the property or properties for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

(5) While R307-840, R307-841, and R307-842 establish specific requirements for performing lead-based paint activities and renovations should they be undertaken, these rules do not require that the owner or occupant undertake any particular lead-based paint activity or renovation.

(6) Individuals or firms wishing to deviate from the certification, notification, work practice, or other requirements of R307-840, R307-841, and/or R307-842 may do so only after requesting and obtaining written approval from the director.

R307-840-2. Definitions.

The following definitions apply to R307-840, R307-841, and R307-842, in addition to the definitions found in R307-101-2.

"Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(i) Shall result in the permanent elimination of lead-based paint hazards; or

(ii) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(b) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with R307-842-2, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State of Utah or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited Training Program" means a training program that has been accredited by the director pursuant to R307-842-1 to provide training for individuals engaged in lead-based paint activities.

"Adequate Quality Control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic Mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business Day" means Monday through Friday with the exception of federal and State of Utah holidays.

"Certificate of Mailing" means Certificate of Mailing as defined by the United States Postal Service.

"Certified Abatement Worker" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to perform abatements.

"Certified Dust Sampling Technician" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to collect dust samples.

"Certified Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization that performs lead-based paint activities, renovations, or dust sampling to which the director has issued a certificate of approval pursuant to R307-842-2(5).

"Certified Inspector" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Project Designer" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified Renovator" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to conduct renovations.

"Certified Risk Assessor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct risk assessments. A risk assessor also samples for the presence of

lead in dust and soil for the purposes of abatement clearance testing.

"Certified Supervisor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

"Chewable Surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that can not be dented by the bite of a young child are not considered chewable.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Clearance Levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

"Common Area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Common Area Group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairways, and laundry rooms.

"Component or Building Component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners, and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course Agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course Test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course Test Blue Print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Deteriorated Paint" means any interior or exterior paint or other coating that is flaking, peeling, chipping, chalking, or cracking, or any other paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this rule for which individuals may receive training from accredited programs and become certified by the director. Disciplines include Abatement Worker, Dust Sampling Technician, Inspector, Project Designer, Renovator, Risk Assessor, and Supervisor.

"Distinct Painting History" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented Methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within 3 feet surrounding the perimeter of the building.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 ug/ft^2 on floors or 250 ug/ft^2 on interior window sills based on wipe samples.

"Elevated Blood Lead Level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 micrograms of lead per deciliter of whole blood (ug/dl) for a single venous test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart.

"Emergency Renovation Operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"Friction Surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to,

certain window, floor, and stair surfaces.

"Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-On Skills Assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in R307-842-1(4), as well as any other skill taught in a training course.

"Hazardous Waste" means any waste as defined in 40 CFR 261.3.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Housing for the Elderly" means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

"HUD" means the United States Department of Housing and Urban Development.

"Impact Surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim Certification" means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the director pursuant to R307-842-2. Interim certification expires 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior Window Sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-Based Paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

"Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

"Lead-Based Paint Activities Courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-Based Paint Hazard" means, for the purposes of lead-based paint activities, any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the EPA pursuant to TSCA Section 403, and for the purposes of renovation, means hazardous lead-based paint, dust-lead hazard, or soil-lead hazard as identified in R307-840-2.

"Lead-Hazard Screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in R307-842-3(3).

"Living Area" means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Local Government" means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under state law.

"Mid-Yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Minor Repair and Maintenance Activities" are activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by R307-841-5(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Multi-Family Dwelling" means a structure that contains more than one separate residential dwelling unit which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multi-Family Housing" means a housing property consisting of more than four dwelling units.

"Nonprofit" means an entity which has demonstrated to any branch of the federal government or to a state, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

"Paint In Poor Condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors), or more than 10% of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in the definition of "Dust-lead hazard".

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks

into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of state or local sources of information).

"Permanently Covered Soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Person" means any natural or judicial person including any individual, corporation, partnership, or association, any Indian tribe, state, or political subdivision thereof, any interstate body, and any department, agency, or instrumentality of the federal government.

"Play Area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

"Principal Instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized Laboratory" means an environmental laboratory recognized by EPA pursuant to TSCA Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Renovation" means the modification of an existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by R307-840-2. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)), the removal of building components (e.g., walls, ceilings, plumbing, windows), weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this rule. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations.

"Residential Building" means a building containing one or more residential dwellings.

"Residential Dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk Assessment" means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

"Soil Sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ug/g) in a play area or average 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

"Start Date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start Date Provided to the director" means the start date included in the original notification or the most recent start date provided to the director in an updated notification.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601.

"Training Manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training Provider" means any organization or entity accredited under R307-842-1 to offer lead-based paint activities, renovator, or dust sampling technician courses.

"Vertical containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for

some exterior renovations but it may be used on any renovation.

"Visual Inspection for Clearance Testing" means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

"Visual Inspection for Risk Assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"Weighted Arithmetic Mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 ug/ft^2, a composite sample (3 subsamples) containing 100 ug/ft^2, and a composite sample (4 subsamples) containing 110 ug/ft^2 is 100 ug/ft^2. This result is based on the equation (60+(3*100)+(4*110))/(1+3+4).

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Window Trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

"Wipe Sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques", or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Work Area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

"0-Bedroom Dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

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R307. Environmental Quality, Air Quality.
R307-841. Residential Property and Child-Occupied Facility Renovation.
R307-841-1. Purpose.

This rule contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp

cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based

Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which

contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

KEY: paint, lead-based paint, lead-based paint renovation
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R307. Environmental Quality, Air Quality.
R307-842. Lead-Based Paint Activities.
R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. For a training program to obtain accreditation from the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the

director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (4)(a) of this section;

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (4)(c) of this section;

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (4)(d) of this section;

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (4)(f) of this section; and

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (4)(g) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught; and

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.

(i) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-

based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);

(B) Training program name, address, and telephone number;

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;

(D) Date(s) and time(s) of training;

(E) Training location(s) telephone number, and address;

(F) Principal instructor's name; and

(G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, or hand delivery. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by the director no later than 10 business days following the course completion;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);

(C) Date(s) of training;

(D) The following information for each student who took the course:

(I) Name,

(II) Address,

(III) Date of birth,

(IV) Course completion certificate number,

(V) Course test score, and

(VI) For renovator or dust sampling technician courses, a digital photograph of the student;

(E) Training manager's name and signature; and

(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement; and

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, or hand delivery. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. To become accredited to offer lead-based paint courses in the specific disciplines listed in this paragraph, training programs must ensure that their courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Clearance standards and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vii) Interior and exterior containment and cleanup methods.

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(ix) Waste handling and disposal.

(x) Providing on-the-job training to other workers.

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain director accreditation to offer refresher training, a training program must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except project designer must include a hands-on component;

(c) Except for project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment, and at the completion of the course, a course test;

(d) A training program may apply for accreditation of a

refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through 3)(e) and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the director and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. If more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test for the supervisor, inspector, and/or risk assessor disciplines, then the individual must also pass the certification exam in the appropriate discipline offered by the director.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(g) To maintain certification a firm shall submit appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint

activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the director;

(iv) Failed to maintain required records; or

(v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the

windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently

covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft^2 for floors, 250 ug/ft^2 for interior window sills, and 400 ug/ft^2 for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft^2 for floors and 250 ug/ft^2 for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement
May 3, 2012 19-2-104(1)(i)

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Subsections 19-3-104(4) and 19-3-104(8).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference), or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, (2010), means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, (2009). Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403 and 49 CFR 173.421 through 424, (2009).

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lung class", refer to "Class".

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2010), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for

disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

"User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222

and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the Executive Secretary, U.S. Nuclear Regulatory Commission, or an Agreement State. The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure.

(a) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10

CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall Determine the occupational radiation dose received during the current year; and

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsections R313-15-205(1) or (2), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year;

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(c) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1) or (2), on form DRC-05, or other clear and legible record, of all the information required on form DRC-05. The form or record

shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(5) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(6) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(7) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose equivalent to an embryo/fetus is the sum of:

(a) The deep dose equivalent to the declared pregnant woman; and

(b) The dose equivalent resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo/fetus is found to have exceeded five mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released, under Rule R313-32 (incorporating 10 CFR 35.75 by reference), from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference),

does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) Notwithstanding Subsection R313-15-301(1)(a), a licensee may permit visitors to an individual who cannot be released, under R313-32 (incorporating 10 CFR 35.75 by reference), to receive a radiation dose greater than one mSv (0.1 rem) if:

(i) The radiation dose received does not exceed five mSv (0.5 rem); and

(ii) The authorized user, as defined in R313-32, has determined before the visit that it is appropriate.; and

(d) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of R313-15, a licensee subject to the provisions of the United States Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190 shall comply with those standards.

(5) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Board's jurisdiction under the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Executive Secretary;

(b) Have previously submitted and received Executive Secretary approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Executive Secretary.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Executive Secretary will require additional cleanup only if, based on new information, the Executive Secretary determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025

rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control as described in Subsection R313-22-35(6)(a);

(b) Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);

(c) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(d) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Executive Secretary may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the Executive Secretary after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Executive Secretary deems such notice to be in the public interest, the Executive Secretary shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the

decommissioning; and

(b) Federal, state and local governments for cases where the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed, unlicensed, and registered radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of five mSv (0.5 rem); and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area; and

(e) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(iv) A registrant is not required to supply and require the use of individual monitoring devices provided the registrant has conducted a survey, pursuant to Section R313-15-501, that demonstrates that the working environment the individual encounters will not likely result in a dose in excess of ten percent of the limits in Subsection R313-15-201(1), and that the individual is neither a minor nor a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI(s) in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(b) Minors likely to receive, in one year, a committed effective dose equivalent in excess of one mSv (0.1 rem); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one mSv (0.1 rem).

Note: All of the occupational doses in Section R313-15-201 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded

location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of

the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

R313-15-702. Use of Other Controls.

(1) When it is not practical to apply process or other engineering controls to control the concentration of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a) Control of access; or

(b) Limitation of exposure times; or

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

R313-15-703. Use of Individual Respiratory Protection Equipment.

If the licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(1) Except as provided in Subsection R313-15-703(2), the licensee or registrant shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health.

(2) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment. The application must include a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and

(b) Surveys and bioassays, as necessary, to evaluate actual intakes; and

(c) Testing of respirators for operability, user seal check for face sealing devices and functional check for others,

immediately prior to each use; and

(d) Written procedures regarding

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; and

(e) Determination by a physician prior to initial fitting of respirators, before the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(f) Fit testing, with fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(4) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(5) The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(6) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(7) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 ed. and included in 29 CFR 1910.134(i)(1)(ii)(A) through (E), (2010). Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5 to 23.5%;

(b) Hydrocarbon (condensed) content of five milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of ten ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(8) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face and facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(9) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

R313-15-704. Further Restrictions on the Use of Respiratory Protection Equipment.

The Executive Secretary may impose restrictions in addition to the provisions of Section R313-15-702, Section R313-15-703, and Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference to:

(1) Ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

R313-15-705. Application for Use of Higher Assigned Protection Factors.

The licensee or registrant shall obtain authorization from the Executive Secretary before using assigned protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, (2010), which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard

Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901(a), (2010), which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Rule R313-32.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section R313-15-902 if:

(a) Access to the room is controlled pursuant to Section R313-32; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in Rule R313-15.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, R313-24, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1008.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-

14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and Appendix G of 10 CFR 20.1001 to 20.2402, (2010), which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, (2010), who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(5) A licensee shipping byproduct material as defined in paragraphs (c) and (d) of the Section R313-12-3 definition of byproduct material intended for ultimate disposal at a land disposal facility licensed under Rule R313-25 must document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer the recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR Part 20 (2010 edition).

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Disposal of Section R313-12-3 Byproduct Material Definition Paragraphs (c) and (d).

(1) Licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), may be disposed in accordance with Rule R313-25, even though it is not defined as low-level radioactive waste. Therefore, licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Rule R313-25, must meet the requirements of Section R313-15-1006.

(2) A licensee may dispose of licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), at a disposal facility authorized to dispose of such material in accordance with Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

R313-15-1009. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1009(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1009(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE I

Radionuclide	Concentration curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100

Pu-241	3,500
Cm-242	20,000
Ra-226	100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1009(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1)		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1009(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors

such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1009(2)(a)(iii) and R313-15-1009(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1009(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(3)(a) and R313-15-703(3)(b); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-1401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsections R313-15-204(1) and R313-15-204(3) and when required by Section R313-15-502; and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall

maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide the individual a written report on the exposure data included in the report to the Executive Secretary. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1206. Reports of Transactions Involving Nationally Tracked Sources.

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in paragraphs (1) through (5) of this section for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The manufacturer, model, and serial number of the source;

(d) The radioactive material in the source;

(e) The initial source strength in becquerels (curies) at the time of manufacture; and

(f) The manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The name and license number of the recipient facility and the shipping address;

(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(e) The radioactive material in the source;
(f) The initial or current source strength in becquerels (curies);
(g) The date for which the source strength is reported;
(h) The shipping date;
(i) The estimated arrival date; and
(j) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The name, address, and license number of the person that provided the source;
(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(e) The radioactive material in the source;
(f) The initial or current source strength in becquerels (curies);
(g) The date for which the source strength is reported;
(h) The date of receipt; and
(i) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(d) The radioactive material in the source;
(e) The initial or current source strength in becquerels (curies);
(f) The date for which the source strength is reported; and
(g) The disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The waste manifest number;
(d) The container identification with the nationally tracked source.
(e) The date of disposal; and
(f) The method of disposal.

(6) The reports discussed in paragraphs (1) through (5) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:
(a) The on-line National Source Tracking System;
(b) Electronically using a computer-readable format;
(c) By facsimile;
(d) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
(e) By telephone with followup by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) through (5) of this section. By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified by paragraph (6)(a) through (6)(d) of this section. The initial inventory report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
(d) The radioactive material in the sealed source;
(e) The initial or current source strength in becquerels (curies); and
(f) The date for which the source strength is reported.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-1401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem)above background and that the annual total effective dose equivalent from any specific environmental source during

decommissioning activities should not exceed 0.1 mSv (0.01 rem)above background.

R313-15-1401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-1401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

KEY: radioactive material, contamination, waste disposal, safety

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R331. Financial Institutions, Administration.
R331-23. Lending Limits for Banks, Industrial Loan Corporations.
R331-23-1. Authority, Scope, and Purpose.

(1) The Department of Financial Institutions enacts this rule under authority granted by Sections 7-1-301, 7-3-19, and 7-8-20.

(2) The rule applies to all loans and extensions of credit, including credit exposure to a derivative transaction, made by banks and industrial loan corporations chartered in the state and their subsidiaries.

(3) The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors and stockholders to excessive risk.

(4) The rule provides exceptions to the general lending limits set forth in Sections 7-3-19 and 7-8-20.

(5) The rule does not apply to loans, extensions of credit and the credit exposure to a derivative transaction made by a bank or an industrial loan corporation to a subsidiary. The rule does not apply to loans, extensions of credit and the credit exposure to a derivative transaction that are subject to, or expressly exempted from, a federal statute or regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

R331-23-2. Definitions.

(1) "Affiliate" means any institution that controls the bank or industrial loan corporation and any other institution that is controlled by the institution that controls the bank or industrial loan corporation. However, "affiliate" does not include a subsidiary of the bank or industrial loan corporation.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Contractual commitment to advance funds" means:

(a) an obligation on the part of the bank or industrial loan corporation to make payments to a third party contingent upon default by the bank's or industrial loan corporation's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(b) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes standby letters of credit, guarantees, puts and other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" if it and all other outstanding loans to the borrower are within the bank's or industrial loan corporation's lending limit on the date of the commitment.

(4) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(5) "Consumer paper" includes paper relating to automobiles, mobile homes, recreational vehicles, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items.

(6) For purposes of the rule, "Control" means the ownership or control of at least 50% of the voting stock.

(7) "Current market value" means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service.

(8) "Credit Exposure to a Derivative Transaction" means the risk to earnings or capital of an obligor's failure to meet the terms of any derivative with the institution or otherwise to perform as agreed. It arises any time institution funds are extended, committed, invested, or otherwise exposed through actual or implied contractual agreements, whether reflected on or off the balance sheet.

(9) "Derivative" means a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(10) "Financial instruments" means stocks, notes, bonds, and debentures traded in a national securities exchange, OTC margin stocks, as defined by the Federal Reserve Board at 12 CFR 220.2, 1996, commercial paper, negotiable certificates of deposit, bankers acceptances, and shares in money market and mutual funds of the type which issue shares in which banks or industrial loan corporations may perfect a security interest.

(11) "Institution" means "institution" as defined in Section 7-1-103.

(12) "Investment grade securities" means marketable obligations in the form of a bond, note or debenture rated in one of the four highest ratings of a nationally recognized rating agency. "Investment grade securities" does not include investments which are predominantly speculative in nature.

(13) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing bank or industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating bank or industrial loan corporation, but not the originating bank or industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the bank or industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(14) "Loans and extensions of credit" does not include:

(a) A receipt by a bank or industrial loan corporation of a check deposited in or delivered to the bank or industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the bank or industrial loan corporation, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring bank or industrial loan corporation ;

(c) An endorsement or guarantee for the protection of a bank or industrial loan corporation of any loan or other asset previously acquired by the bank or industrial loan corporation

in good faith or any indebtedness to a bank or industrial loan corporation for the purpose of protecting the bank or industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the bank or industrial loan corporation;

(e) The giving of immediate credit to a bank or industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing bank or industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or similarly available daily bid and ask price market.

(17) "Sale of Federal Funds" means any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(18) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to the beneficiary on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the account party, or

(b) To make payment on account of any indebtedness undertaken by the account party, or

(c) To make payment on account of any default by the account party in the performance of an obligation.

(19) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(20) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and the portion of subordinated notes and debentures with more than one year maturity remaining.

R331-23-3. General Rule.

(1) The total loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation to any person outstanding at one time and not fully secured, as determined in a manner consistent with this rule, by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's or industrial loan corporation's total capital.

(2) The total loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds and standing may not exceed 10% of the total capital of the bank or industrial loan corporation. This limitation is separate from and in addition to the 15% limitation described in Subsection (1), above.

(a) At all times, the total loans or extensions of credit to a person based on the limitation for banks in Section 7-3-19(2) and for industrial loan corporations in Rule R331-23-3(2) shall be secured by readily marketable collateral having a current market value of at least 100% of the total amount of funds outstanding, excluding accrued or discounted interest.

(b) Each bank or industrial loan corporation shall institute adequate procedures to ensure that the collateral value fully secures the outstanding loan or extension of credit at all times. At a minimum, each bank or industrial loan corporation shall perfect its security interest in the collateral and shall calculate the market value of the collateral at least monthly, or more frequently, as may be deemed necessary to ensure compliance with Section 7-3-19(2) for banks and Rule R331-23-3(2) for industrial loan corporations.

(c) If collateral values fall below 100% of the outstanding loan, the bank or industrial loan corporation must, within 60 days, obtain additional collateral in an amount sufficient to provide 100% coverage, require reduction of the loan or extension of credit, or sell the collateral and liquidate the debt. During this period, the loan or extension of credit will be considered nonconforming.

R331-23-4. Combining Loans to Separate Borrowers - General Rule.

(1) Loans, extensions of credit and derivative transactions to one person will be combined where the proceeds of the loan, extension of credit and derivative transactions are to be used for the direct benefit of any other person or persons.

(2) Loans, extensions of credit and derivative transactions to a general partnership, joint venture or association shall, for purposes of this rule, be considered loans or extensions of credit jointly and severally to each member of such partnership, joint venture or association unless the agreement creating the general partnership, joint venture or association provides otherwise, in which case the loans or extensions of credit shall be allocated to each member only to the extent provided for by the terms of any such agreement.

(3) The sum of all loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation outstanding at any one time to a person and all of its affiliates may not exceed 50% of the bank's or industrial loan corporation's total capital.

R331-23-5. Exceptions to the Lending Limits.

(1) The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

(2) Loans Secured by U.S. Obligations and General Obligations of a state or political subdivision.

(a) Loans, extensions of credit and the portion of any credit exposure to a derivative transaction secured by bonds, notes, certificates of indebtedness or Treasury bills of the United States or by other similar obligations fully guaranteed as to the principal and interest by the United States or general obligations of a state or a political subdivision are not subject to any limitation based on total capital.

(b) This exception applies only to the extent that loans, extensions of credit and the portion of any credit exposure to derivative transactions are fully secured by the current market value of obligations of the United States or guaranteed by the United States or general obligations of a state or political subdivision.

(c) If the market value of the collateral declines to the extent that the loan or the credit exposure to a derivative transaction is no longer in conformance with this exception and exceeds the general 15% limitation, the loan or the credit exposure to a derivative transaction must be brought into conformance within 60 days.

(3) Loans to or Guaranteed by a Federal Agency

(a) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any

department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on total capital.

(b) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(c) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within 60 days after demand for payment is made.

(d) A guarantee or commitment is unconditional if the protection afforded the bank or industrial loan corporation is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's or industrial loan corporation's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or industrial loan corporation.

(4) Loans Secured by Segregated Deposit Accounts

(a) Loans, extensions of credit and the portion of any credit exposure to a derivative transaction secured by a segregated deposit account in the lending bank or industrial loan corporation shall not be subject to any limitation based on total capital.

(b) The bank or industrial loan corporation must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan or derivative transaction, the bank or industrial loan corporation must establish internal procedures which will prevent the release of the security.

(5) Loans to Financial Institutions with the Approval of the commissioner

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the commissioner, shall not be subject to any limitation based on total capital.

(b) This exception is intended to apply only in emergency situations where a bank or industrial loan corporation is called upon to provide assistance to another financial institution.

(6) Discount of Consumer Paper

(a) This exception allows a bank or industrial loan corporation to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10% of its total capital (in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the person transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank or industrial loan corporation to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(b) Under certain circumstances, consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's or industrial loan corporation's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) any officer designated by the bank's or industrial loan corporation's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank or industrial loan corporation is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(7) Loans Secured by Livestock

(a) This exception allows a bank or industrial loan corporation to make loans or extensions of credit to one person in an amount equal to 10% of its total capital, in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115% of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank or industrial loan corporation must maintain in its files an inspection and appraisal report on the livestock pledged.

(b) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (i) is assigned to the bank or industrial loan corporation by a recordable instrument and (ii) is protected against being defeated by some other lien or claim, by payment to a person other than the bank or industrial loan corporation, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115% of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(8) Loans to Student Loan Marketing Association, Utah Board of Regents or Utah Higher Education Assistance Authority

Loans or extensions of credit to the Student Loan Marketing Association, the Utah Board of Regents or the Utah Higher Education Assistance Authority are not subject to any limitation based on total capital.

(9) Loans to Industrial Development Authorities and Housing Authorities

A loan or extension of credit to an industrial development authority, housing authority or similar public entity in the state is not a loan or extension of credit to the authority provided that:

(a) The bank or industrial loan corporation relies on the credit of the lessee or owner of the facility to be financed by the loan or extension of credit;

(b) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(c) The authority's interest is assigned to the bank or industrial loan corporation as security for the loan or a promissory note from the lessee or owner to the bank or industrial loan corporation provides a higher order of security than the assignment of a lease, trust deed or mortgage; and

(d) lessee's or tenant's rent or mortgage payment is assigned and paid directly to the bank or industrial loan corporation.

A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee or owner and will be combined with other obligations of the lessee or owner for purposes of Section 7-3-19 and Section 7-8-20.

(10) Other Exemptions

With the written approval of the commissioner other exemptions to the provisions of Section 7-3-19 and Section 7-8-20 may be permitted.

R331-23-6. Credit Exposure to Derivative Transactions.

(1) Each bank or industrial loan corporation board of directors shall institute adequate policies and procedures to ensure that derivative positions are established for purposes of mitigating one or more risks inherent in an institution's normal business activities, and not for the purpose of increasing such exposure or for the purposes of speculation in price movement. The policies and procedures shall require the proper identification and prudent limitation of the risks associated with derivatives.

(2) Derivative transactions should be transacted subject to established market terms that provide for prudent counterparty risk mitigation techniques reflected in agreements developed by the International Swap Dealers Association ("ISDA").

(3) Valuation. Each bank or industrial loan corporation shall calculate the exposure to derivative transactions using a consistent method from one of the following:

(a) Internal Model Method.

(i) Credit exposure. The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank or industrial loan corporation shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank or industrial loan corporation shall calculate its potential future credit exposure by using an internal model that has been, at least annually, validated by a qualified party independent from the valuation process.

(iv) Net credit exposure. A bank or industrial loan corporation that calculates its credit exposure by using the Internal Model Method pursuant to this paragraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(b) Conversion Factor Matrix Method. The current credit exposure arising from a derivative transaction shall be equal to the product of the notional amount and conversion factor. The conversion factor is determined by asset class and by the maturity of assets: Interest rate, foreign exchange and gold derivatives are valued by multiplying the notional amount by the following multiples based on maturity of the contract: .015 for a maturity of 1 year or less, .03 for a maturity of 1-3 years, .06 for a maturity of 3-5 years, .12 for a maturity of 5-10 years, and .3 for a maturity of over 10 years. Equity derivatives, regardless of maturity will be multiplied by a factor of .2. Other derivatives, including commodities other than gold will be multiplied by: .06 for a maturity of a year or less, .18 for a maturity of 1-3 years, .3 for a maturity of 3-5 years, .6 for a maturity of 5-10 years and 1 for a maturity of over 10 years.

(c) Remaining Maturity Method. The current credit exposure arising from a derivative transaction under the Remaining Maturity Method shall be the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount, the remaining maturity in years of the transaction and a fixed multiplicative factor. Like the conversion factor, the fixed multiplicative factor is determined by asset class, but instead of having a fixed value for purposes of the lending limit over the life of a contract, as the maturity diminishes so does the value for purposes of the lending limit. The fixed multiplicative factor for interest rate, foreign exchange and gold derivatives is 1.5%. For equity derivatives and any other derivatives including commodities the fixed multiplicative factor will be 6%.

R331-23-7. Record Keeping.

(1) The board of directors shall review at least annually the most recent financial statements on all loans and extensions of credit, including credit exposure to a derivative transaction, to one person exceeding 10% of total capital. Based upon this review, the board of directors shall approve a determination that the conditions outlined in Rule R331-23-4 do not exist for such loans and extensions of credit. A statement of the above approval shall be incorporated into the minutes of the board of directors meeting at which the review was accomplished.

(2) In the case of loans and extensions of credit subject to the limitations of Section 7-3-19(2) and Rule R331-23-3(2), a record of the market value of the collateral securing such loans or extensions of credit shall be maintained as set forth in Rule R331-23-3.

KEY: loans, banks, industrial loan corporations*
July 16, 1997 **7-3-19**
Notice of Continuation September 28, 2012 **7-8-20**

R337. Financial Institutions, Credit Unions.
R337-4. Establishment of "Credit Union Service Organizations".
R337-4-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15) and 7-1-505 and construes and applies to Sections 7-9-5(21) and 7-9-5(34).

(2) This rule applies to all state-chartered credit unions.

(3) The purpose of this rule is to define "credit union service organizations", outline the procedures and requirements for establishing these organizations, and establish rules governing the affairs of the organizations.

R337-4-2. Definitions.

(1) "Capital and surplus" means shares, deposits, reserves, and undivided earnings.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Credit union service organization" means an organization owned by one or more credit unions which provides any of the following services:

(a) Checking and currency services:

(i) Check cashing;

(ii) Coin and currency services, and

(iii)Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

(b) Clerical, professional and management services:

(i) Accounting services;

(ii) Courier services;

(iii)Credit analysis;

(iv) Facsimile transmissions and copying services;

(v) Internal audits for credit unions;

(vi) Locator services;

(vii)Management and personnel training and support;

(viii)Marketing services;

(ix)Research services; and

(X) Supervisory committee audits;

(c) Consumer mortgage loan origination;

(d) Electronic transaction services;

(i) Automated teller machines (ATM) services;

(ii) Credit card and debit card services;

(iii)Data processing;

(iv) Electronic fund transfer (EFT) services;

(v) Electronic income tax filing;

(vi) Payment item processing;

(vii)Wire transfer services; and

(viii)Cyber financial services;

(e) Financial counseling services:

(i) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;

(ii) Estate planning;

(iii)Financial planning and counseling;

(iv) Income tax preparation;

(v) Investment counseling; and

(vi) Retirement counseling;

(f) Fixed asset services:

(i) Management, development, sale, or lease of fixed assets; and

(ii) Sale, lease, or servicing of computer hardware or software;

(g) Insurance brokerage or agency:

(i) Agency for sale of insurance;

(ii) Provision of vehicle warranty programs; and

(iii) Provision of group purchasing programs;

(h) Leasing:

(i) Personal property; and

(ii) Real estate leasing of excess credit union service organization property;

(i) Loan support services:

(i) Debt collection services;

(ii) Loan processing, servicing, and sales; and

(iii)Sale of repossessed collateral;

(j) Loans and extensions of credit;

(k) Member business loans;

(l) Record retention, security and disaster recovery services:

(i) Alarm-monitoring and other security services;

(ii) Disaster recovery services;

(iii)Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;

(iv) Provision of forms and supplies; and

(v) Record retention and storage;

(m) Securities brokerage services;

(n) Shared credit union branch (service center) operations;

(o) Student loan origination;

(p) Travel agency services;

(q) Trust and trust-related services:

(i) Acting as administrator for prepaid legal service plans;

(ii) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity;

(iii)Trust services; and

(r) credit union service organization investments in non-credit union service organization service providers: In connection with providing a permissible service, a credit union service organization may invest in a non-credit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

(4) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a member, that is made on the basis of any obligation of that member to repay the funds, or repayable from specific property pledged by or on behalf of a member. "Loans and extensions of credit" includes:

(a) A contractual commitment to advance funds;

(b) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a member may be liable as maker, drawer, endorser, guarantor, or surety;

(c) A participation without recourse, with regard to the participating credit union service organization.

(5) "Loans and extensions of credit" does not include:

(a) An endorsement or guarantee for the protection of a credit union and credit union service organization of any loan or other asset previously acquired by the credit union service organization in good faith or any indebtedness to a credit union and the credit union service organization for the purpose of protecting the credit union and the credit union service organization against loss or of giving financial assistance to it;

(b) The purchase of investment grade securities subject to a repurchase agreement in which the purchasing credit union has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(c) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(6) "Member" means a member of a stockholder credit union.

(7) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in which the acquiring institution;

(a) Has no formal or direct role in establishing the terms and conditions binding the borrower; or

(b) is not a signatory of the loan agreement binding the borrower.

(8) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.

(9) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

(10) "Well capitalized" means "well capitalized" as defined in 12 U.S.C. Sec. 1790d(c)(1).

R337-4-3. Establishment and Approval of a Credit Union Service Organization.

(1) A credit union by action of its board of directors may establish or invest in, or both, a credit union service organization authorized to engage in the services specified in this rule if:

(a) The credit union has capital and surplus of $500,000 or more and;

(b) The credit union meets the net worth classification of "well capitalized".

(2) The total investments in, or loans to all service organizations shall not exceed 5% of the capital and surplus of the credit union.

(3) The services performed by the credit union service organization are limited primarily to stockholder credit unions and their members or members of credit unions contracting with the credit union service organization. However, for member business loans and loans and extensions of credit, the credit union service organization shall only serve members.

(4) To establish a credit union service organization, a credit union shall file an application with the commissioner identifying the services the credit union service organization will provide.

The application shall contain pro forma statements or other information sufficient to determine:

(a) The benefits the credit union service organization will create for the credit union or its members; and

(b) That the investment will not represent an unreasonable risk to the safety and soundness of the credit union.

(5) The commissioner shall approve or disapprove the application within 30 days after accepting it as complete. If the commissioner does not approve or disapprove an application within this time, it is considered approved. A credit union service organization approved prior to the effective date of the 2002 rule change need not reapply for authorization.

(6) A credit union may not change the type of services engaged in by the credit union service organization or engage in new services without providing 30 days written notice to the commissioner.

(7) The commissioner may at any time, based upon supervisory, legal, or safety and soundness reasons, limit the services engaged in by the credit union service organization.

(8) The credit union service organization shall comply with all relevant and applicable state and local laws and ordinances for the specific services offered.

(9) A credit union may establish or invest in, or both, a credit union service organization to provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

(10) A credit union service organization may provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

R337-4-4. Examination of Credit Union Service Organizations by Commissioner or Supervisor.

(1) The commissioner or the supervisor of credit unions shall visit and examine, or cause to be visited and examined, every credit union service organization as the commissioner considers necessary or advisable.

(2) At every examination of a credit union service organization, careful inquiry shall be made as to:

(a) the condition and resources of the credit union service organization examined;

(b) the mode of conducting and managing its affairs;

(c) the actions of its directors and officers;

(d) the investment and disposition of its funds;

(e) whether or not it is violating any provision of law relating to the credit union service organization or the business of the credit union service organization examined;

(f) whether or not it is complying with its articles of incorporation and bylaws; and

(g) such other matters as the commissioner may prescribe.

(3) The commissioner may, in the commissioner's discretion, accept examinations of any credit union service organization which are made by federal examiners or examiners from other states having jurisdiction over that credit union service organization in lieu of any examination required under the laws of this state.

R337-4-5. Prohibited Member Business Loans.

A credit union service organization may not extend a member business loan to the following individuals of the credit union service organization or credit unions which invest in or lend to the credit union service organization; or in entities in which these persons have control:

(1) board members;

(2) executive officers; and

(3) appointed committee members.

R337-4-6. Written Member Business Loan Policies.

A credit union service organization offering member business loans shall adopt specific written loan policies and review them at least annually. The credit union service organization shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies. At a minimum, the policies shall address the following:

(1) the types of member business loans to be made;

(2) the qualification and experience of personnel (minimum of two (2) years) involved in making and administering member business loans;

(3) a requirement to analyze and document the ability of a borrower to repay the loan;

(4) receipt and periodic updating of financial statements and other documentation, including tax returns;

(5) a requirement for sufficient documentation supporting each request to extend credit, or increase an existing loan or line of credit (except where the credit union service organization finds that the documentation requirements are not generally available for a particular type of member business loan and states the reasons for those findings in the credit union's written policies). At a minimum, the documentation shall include the following:

(a) balance sheet;

(b) cash flow analysis;

(c) income statement;

(d) tax data;

(e) analysis of leveraging; and

(f) comparison with industry average or similar analysis;

(6) the collateral requirements shall include:

(a) loan-to-value ratios;

(b) determination of value;

(c) determination of ownership;

(d) steps to secure various types of collateral; and

(e) how often the credit union service organization will reevaluate the value and marketability of collateral;

(7) the interest rates and maturities of member business

loans; and
(8) general loan procedures which include:
(a) loan monitoring;
(b) servicing and follow-up; and
(c) collection.

R337-4-7. Allowance Account for Loan Losses.

A credit union service organization that makes member business loans is required to establish and maintain an allowance account for loan losses as set forth in Rule R337-5-3.

R337-4-8. Purchase and Sale of Loans and Participations in Loans.

(1) A credit union service organization shall have authority to make loan participation arrangements with other credit unions, credit union service organizations, or financial organizations in accordance with its written policies, if the credit union service organization that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan.

(2) A credit union service organization shall comply with Rule R331-12.

(3) The limitations set forth in Section 7-9-20(7)(f) apply to loan participations purchased or sold by a credit union service organization.

R337-4-9. Loan Limitations.

(1) The individual and aggregate loan limitations set forth in Section 7-9-20 shall apply to all loans and extensions of credit and member business loans made by a credit union and its wholly owned credit union service organization as if they were one entity.

(a) A credit union service organization may extend a member business loan to a person if the person is a business entity, and at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization may extend a member business loan to a person if the person is an individual, and the individual is a member of the credit union for at least six months prior to the date of the extension of the member business loan.

(2) The individual and aggregate loan limitations for a credit union service organization that is a non wholly owned subsidiary of a credit union shall be the same as set forth in Section 7-9-20. The limitation shall be determined by allocating loans made by the non wholly owned credit union service organization to its member credit unions on a pro-rata ownership basis.

(a) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is a business entity, and at least one or more of the individuals having a controlling interest in that business entity has been a member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is an individual, and the individual is a member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan.

(3) Loan limitations shall be determined using the last quarterly report of condition filed with the Department.

R337-4-10. Trust Business.

(1) Only a credit union service organization that is a wholly owned subsidiary of a single credit union may seek authorization to become a trust company and engage in trust business in this state. A wholly owned credit union service organization seeking to become a trust company shall file an application as provided in Section 7-5-3 with the commissioner in the manner provided in Section 7-1-704, and shall pay the fee prescribed in Section 7-1-401(6).

(2) In addition to the criteria set forth in Section 7-5-3(2) the wholly owned credit union service organization shall have and maintain a minimum capital level of two million dollars ($2,000,000). Capital shall be determined in accordance with Generally Accepted Accounting Principles (GAAP).

(3) Wholly owned credit union service organizations authorized to engage in trust business in this state shall comply with the requirements of Section 7-5-1 et. al.

(4) The safety and soundness examination of a wholly owned credit union service organization engaged in trust business may be performed in conjunction with the safety and soundness examination of the credit union. A trust examination fee shall be assessed in accordance with Section 7-1-401(2).

(5) Any loss, liability or contingent liability of a wholly owned credit union service organization operating as a trust company shall be offset first against the capital of the wholly owned credit union service organization and then against the capital of the credit union.

(6) A wholly owned credit union service organization that engages in trust business shall maintain its books according to GAAP. A wholly owned credit union service organization that engages in trust business shall annually make or cause to be made an audit of the credit union service organization's books by a licensed certified public accountant.

KEY: credit unions
October 4, 2002 7-1-301(3)(a)
Notice of Continuation December 14, 2012 7-9-5(34)

R367. Governor, Planning and Budget, Inspector General of Medicaid Services (Office of).
R367-1. Office of Inspector General of Medicaid Services.
R367-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Office of Inspector General of Medicaid Services in Utah, and defines all of the provisions necessary to administer the Office.

(2) The rule is authorized under Section 63J-4a-602 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) If any provider manual or policy guide is inconsistent with Administrative Rule, the Administrative Rule shall be supreme.

R367-1-2. Definitions.

(1) The terms used in this rule are defined in Section 63J-4a-102.

R367-1-3. The Office of Inspector General.

(1) 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, The Office of Inspector General must ensure that the Medicaid Program is managed in an efficient and effective manner to minimize fraud, waste, and abuse, in the Medicaid program as outlined in Section 63J-4a-202. The Office of Inspector General has entered into a Memorandum of Understanding (MOU) with the Department outlining the delegation of duties from the Department to the Office and as required by federal and state statutes.

R367-1-4. Office Duties.

(1) The Office of the Inspector General shall perform the following duties:

(a) Adhere to appropriate standards as outlined in the Government Accounting Office's Government Auditing Standards.

(b) The Office will receive reports of potential fraud, waste, or abuse in the state Medicaid program through phone, website, or other electronic means open to the public:

(i) establish a 24-hour, toll free hotline monitored by staff, or voicemail as appropriate.

(ii) establish a separate identifiable email to report fraud, waste or abuse of Medicaid funds.

(c) The Office will investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program by post payment review of claims paid under fee-for service, managed care, capitation, waiver, contracts or other payment methods where funds are expended by the Department for Medicaid related services or programs.

(d) The Office will obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program by either developing an in-house program, by contract with private vendors, or other suitable methods as agreed upon with the Department. The Office may also develop in-house programs in consultation with the Department.

(e) The Office will establish an MOU with the Medicaid Fraud Control Unit to identify and recover improperly or fraudulently expended Medicaid funds.

(f) The Office will determine appropriate methodology for identifying risk associated with the Division and its programs under Medicaid funding.

(g) The Office will regularly report to the Department regarding all identified cases of fraud, waste or abuse. The Office will report how the Department can reduce cost or improve performance through changes in policies or claims payment systems. The Office will operate the program integrity function and audit function to the extent possible and as described under a MOU with the Department to be established each state fiscal year beginning in July and ending In June of the following year. The MOU must be renewed each year by both the DOH and OIG.

(h) The Office will establish a means for providers to return payments to the Office. The Office will return all collected overpayments to the Department, except to pay Recovery Audit Contractors.

(i) The Office will provide training to agencies, providers and employees on identifying potential fraud, waste, or abuse of Medicaid funds regularly. All training materials and curriculum will be developed in consultation with the Department and may include Department representation.

R367-1-5. Incorporations by Reference.

(1) All rules, regulations, and laws below are incorporated by reference.

(a) 42 CFR 431.107(b)(2)
(b) 42 CFR 456, Subpart B
(c) 42 CFR 455.13
(d) 42 CFR 455.21
(e) 42 CFR 1007
(f) Title 63G, Chapter 2
(g) Title 26-1-17.5
(h) Section 26-1-24
(i) Section 63G-4-102
(j) 42 USC 139a(a)(3)
(k) 42 CFR 431, Subpart E

R367-1-6. Discrimination Prohibited.

(1) In accordance with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC 70b), and the regulations at 45 CFR Parts 80 and 84, the Office assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R367-1-7. Utilization Review and Medicaid Services Provided under the Utah Medicaid Program.

(1) The Office may request records that support provider claims for payment under programs funded through the Department. These requests shall be in writing and identify the records to be reviewed. Written responses to requests must be returned within 30 days of the date of the written request. Responses must include the complete record of all services and supporting services for which reimbursement is claimed. If the provider is unable to produce the documents on request, the provider shall be granted 24 hours to provide all necessary and appropriate information supporting and documenting the need for services. However, if there is no response within the 30 day period, the Office will close the record and will evaluate the payment based on the records available.

(2) The Office may conduct announced or unannounced onsite reviews and visits. On-site reviews require that the provider submit records on request based on 42 CFR 431.107(b)(2). All announced visits will receive reasonable notice from the Office.

(3) The Office shall conduct hospital utilization reviews as outlined in the Department's Superior System Waiver in effect at the time service was rendered.

(a) The Office shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual criteria, published by McKesson Corporation.

(b) The standards in the InterQual criteria, or other suitable industry standard substitute, shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are excluded as a Medicaid benefit by rule or contract.

(c) Where InterQual or other suitable industry standard

substitute criteria are silent, the Office shall approve or deny services based upon appropriate administrative rules or the Department's criteria as incorporated in the Medicaid provider manuals.

(4) Providers shall refund payments to the Office upon written request if any of the following occur:

(a) the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program; or

(b) does not comply with state or federal policies and regulations.

(c) If services cannot be properly verified or when a provider refuses to provide or grant access to records.

(d) Unless appealed, all refunds must be made to the Office within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R367-1-14.

(e) A provider shall reimburse the Office for all overpayments regardless of the reason for the overpayment. Including, but not limited to agency errors, inadvertent errors, or other program errors. The Office may make a request to the Department to deduct an equal amount from future reimbursements.

R367-1-9. Medicaid Fraud.

(1) The Office establishes and maintains methods, criteria, and procedures that meet all federal and state requirements for prevention, control of program fraud and abuse; and provider sanctioning and termination.

(2) The Office will enter into an MOU with The Medicaid Fraud Control Unit and the Department to ensure appropriate measures are established to reduce and prevent fraud and abuse in the Medicaid program.

R367-1-10. Confidentiality.

(1) 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 providers, applicants, clients, and recipients to purposes directly connected with the administration of the plan. The Office will adopt those principles through incorporation of the references note.

R367-1-11. Right to Contract with Recovery Audit Organizations.

(1) The Office may contract for the investigation, notification and recovery of overpayments under any funds paid by the Department through the Medicaid program, Title XIX of the Social Security Act, under a contingency fee arrangement not to exceed the maximum amount set by CMS of the state's share actually recovered from overpayments according to federal regulations.

R367-1-12. Auditing of the Department of Health.

12.1. Audit Responsibilities.

(1) Audits will be conducted under the regular supervision of the Inspector General.

(2) The audit reports will then be released to the Director of the Governor's Office of Planning and Budget to which the Inspector General reports administratively.

(3) Audits will primarily be determined through a risk assessment approved by the Office.

(4) All activities of the Office will remain free of influence from any Department, Division, private or contracted entities.

(5) The Office audit group will follow the Generally Accepted Government Auditing Standards (GAGAS) as it relates to audit standards and training.

(6) The auditors will immediately notify the Inspector General of any serious deficiency or the suspicion of significant fraud during its review.

(7) Pursuant to Utah Code 63J-4a-301 the Office will have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating directly or indirectly to the state Medicaid program.

12.2. Audit Plan.

(1) An audit plan will be prepared by the Office at least annually and shall:

(a) Identify the audits to be performed, based on audit risk assessment reviewed annually;

(b) Identify resources to be devoted to audits in plan;

(c) Ensure that audits evaluate the efficiency and effectiveness of tax payer dollars in the Medicaid program;

(d) Determine adequacy of Medicaid's controls over federal and state compliance.

(2) An OIG audit shall:

(a) Issue regular audit reports on the effectiveness and efficiency of the defined audits within the Medicaid program in Utah;

(b) Ensure that such audits are conducted within professional standards such as those defined by the Institute of Internal Auditors and Generally Accepted Governmental Auditing Standards (GAGAS);

(c) Report annually to the Governor's office on or before October 1, and to the Utah Legislature before November 30 as stated in Section 63J-4a-502.

12.3. Access to Records and Employees.

(1) In order to fulfill the duties described in Section 63J-4a-202, the Office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, as stated in 63J-4a-301. Access to employees that the inspector general determines may assist in the fulfilling of the duties of the Office shall be granted as stated in 63J-4a-302.

12.4. Subpoena Power.

(1) The Office shall have the power to issue a subpoena to obtain record or interview a person that the Office has the right to access as stated in 63J-4a-401.

R367-1-13. Billing Codes.

(1) In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA), along with other national accredited coding standards as defined under the federal law or other nationally accepted coding standards and as established under the Affordable Care Act of 2010 which requires all Medicaid providers to bill according to National Correct Coding Initiatives (N.C.C.I) that are in effect at the time of submitting claims to the Medicaid Agency for payments.

R367-1-14. Provider Communication.

(1) In completing the work as outlined in 63J-4a-202(k), to identify and recoup overpayments, the Office will communicate overpayments information as follows:

(a) Any suspected recoupment or take back against future funds less than $5,000 shall be communicated to the provider via email including a verification certificate attached to verify delivery.

(b) Any suspected recoupment or take back against future funds greater than $5,000 shall be communicated to the provider through certified mail or similar guaranteed delivery mechanism.

(c) Administrative hearing notice requirements will also comply with (a) and (b) above.

(d) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

(2) Any request for records or documents will also comply with subsections (a) through (d).

R367-1-16. General Rule Format.

(1) The following format is used generally throughout the rules of the Office. 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.

(2) 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.

(3) Definitions. Definitions that have special meaning to the particular rule.

(4) 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 (4).

KEY: Inspector General, health, Medicaid fraud waste abuse

December 27, 2012 **63J-4a-101**
63J-4a-201
63J-4a-602

R380. Health, Administration.
R380-42. Open and Public Meetings Act Electronic Meetings.
R380-42-1. Authority and Purpose.

(1) Utah Code Section 52-4-207 requires a state public body that holds electronic meetings to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by each public body created by statute within Utah Code, Title 26 or by Department rule, except for any public body that has adopted its own rule.

(2) A public body with rule making authority may adopt a separate rule governing its electronic meetings.

(3) This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.

R380-42-2. Definitions.

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Meeting" means a meeting of the public body that is required to be public by the provisions of the Open and Public Meetings Act, Utah Code Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

(4) "Business day" means a day that the Department is open to the public for the conduct of business, exclusive of weekends and state holidays.

R380-42-3. Designation of Electronic Meetings.

(1) The presiding officer may schedule any meeting as an electronic meeting upon the presiding officer's discretion or upon request of any member of the public body.

(a) A member of the public body may request that the member's participation in the meeting be allowed electronically up to 48 hours, but no less than two business days, prior to the commencement of the meeting. The presiding officer may refuse a member's request to hold a meeting electronically.

(b) If the Department cannot technically arrange for the meeting to be held electronically, the presiding officer's decision to allow electronic participation the Department may deny the request.

(c) The presiding officer or the Department may restrict the number of connections for members to participate in the meeting based on available equipment capability.

(d) If budget constraints do not allow the Department to provide an electronic connection at no charge to the member, the member who chooses to participate electronically may be required to do so at his or her own cost.

(2) No vote of the public body is necessary to include other members of the public body to join the meeting through an electronic connection.

R380-42-4. Anchor Location.

(1) Unless otherwise designated in the posted public notice of the meeting, the anchor location for an electronic meeting held by the public body is the Cannon Health Building located at 288 North 1460 West, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability.

(3) The Department shall provide a meeting room for an anchor location for any meeting that is held electronically.

R380-42-5. Quorum, Member Participation.

(1) A quorum is not required to be present at the anchor location.

(2) A member of the public body who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

R380-42-6. Public Participation.

Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

KEY: electronic meetings, open and public meetings
December 11, 2012 52-4-207

R384. Health, Disease Control and Prevention, Immunization.
R384-202. Traumatic Spinal Cord and Brain Injury Rehabilitation Fund.
R384-202-1. Authority and Purpose.

(1) This rule provides the procedures for the distribution of money from the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund established by Title 26, Chapter 54.

(2) This rule is authorized by Title 26, Chapter 54, Section 103.

R384-202-2. Definitions.

(1) "Committee" means the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund Advisory Committee.

(2) "Fund" means the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund.

R384-202-3. Priorities and Criteria.

As necessary and not less than on an annual basis, the Committee shall review and establish the criteria and priorities for the distribution of money from the Fund. These criteria and priorities shall be followed when recommending to the Executive Director the distribution of money to charitable clinics for the provision of the services and equipment designated in Section 26-54. These criteria shall be recorded in the minutes of the meetings and incorporated into the guidance for the request for funding applications.

R384-202-4. Request for Funding Applications.

(1) A request for funding applications will be issued by the Department.

(2) Applications to the Fund shall comply with the current guidance established by the committee, approved by the Executive Director and issued by the Department.

(3) Applications will be evaluated based upon the Committee's approved criteria using an objective review subcommittee. Evaluation results will be presented to the Committee for review and approval. The Committee will submit the approved applicants with funding recommendations to the Executive Director.

R384-202-5. Fund Awards.

(1) The Executive Director will determine Fund awards based on the committees recommendations for approved applicants.

(2) The Department shall issue the Fund awards in the form of contracts or grants.

(3) Awards are contingent upon available funds, successful completion of previous contract services and the quality of spinal cord injury and traumatic brain injury services previously provided.

(4) Funded applicants will submit required reports as specified in the contract or grant.

R384-202-6. Audit Provisions.

A charitable clinic that receives state funds under 26-54 must submit, upon request, to a Department audit of the recipients' compliance with the terms of the contract or grant.

KEY: traumatic spinal cord injury, traumatic brain injury, Traumatic Spinal Cord and Brain Injury Rehabilitation Fund
December 18, 2012 26-54

R386. Health, Disease Control and Prevention, Epidemiology.
R386-705. Epidemiology, Health Care Associated Infection.
R386-705-1. Authority and Purpose.

This rule establishes data sharing requirements for health care associated infections and for influenza vaccination of health care workers. It is authorized by Utah Code Sections 26-1-30(2), 26-6-3, 26-6-7, and 26-6-31.

R386-705-2. Definitions.

For purposes of this rule:

(1) "Ambulatory surgical center" or "ASC" is as defined in Utah Code Section 26-21-2.

(2) "Department" means the Utah Department of Health.

(3) "End stage renal disease facility" is as defined in Utah Code Section 26-21-2.

(4) "General acute hospital" is s defined in Utah Code Section 26-21-2.

(5) "Health care facility" is as defined in Utah Code Section 26-21-2.

(6) "Health care workers" or "HCW"s include, but are not limited to, personnel such as physicians, nurses, nursing assistants, therapists, technicians, dental personnel, pharmacists, laboratory personnel, autopsy personnel, contractual staff not employed by the health care facility, and persons (e.g., clerical, dietary, housekeeping, maintenance, and volunteers) not directly involved in patient care, but potentially exposed to infectious agents that can be transmitted to and from employees of a healthcare facility.

(7) "Specialty hospital" is as defined in Utah Code Section 26-21-2.

R386-705-3. Health Care Associated Infections Reporting.

(1) Pursuant to Utah Code Section 26-6-31, facilities required to report data on the incidence and rate of health care associated infections as mandated by the Center for Medicare and Medicaid Services (CMS) to the National Healthcare Safety Network (NHSN) in the Centers for Disease Control and Prevention (CDC) shall:

(a) Share data with the Department by joining the Department NHSN Group, UDOH HAI (ID# 17686), and confer rights to the Department in NHSN. All data shared with the Department under this rule shall exclude patient identifiers unless necessary for reporting requirements and data validation.

(b) Follow CMS rules and NHSN protocols for defining terms and criteria for reporting infection data.

(2) Facilities required to share data submitted to NHSN with the Department include:

(a) Ambulatory surgical facilities;

(b) General acute hospitals;

(c) Specialty hospitals;

(d) End stage renal disease facilities; and

(e) Any other facilities as required by CMS.

(3) Facilities required to report data to NHSN shall confer rights to the Department for all reported data elements, except for patient identifiers unless necessary for reporting requirements, including for data validation, for the following conditions:

(a) Central line associated bloodstream infections (CLABSI);

(b) Catheter associated urinary tract infections;

(c) Surgical site infections from procedures on the colon and abdominal hysterectomy;

(d) Methicillin-resistant Staphylococcus aureus bacteremia;

(e) Clostridium difficile infection of the colon; and

(f) Any other health care associated infections reported to NHSN as required by CMS.

R386-705-4. Influenza Vaccination Rate Reporting.

(1) Each licensed hospital and licensed long term care facility shall report its influenza vaccination rates for the current influenza season by January 31.

(2) Reports of influenza vaccination rates shall include the total number of HCWs and the number of those workers who are documented to have received an influenza vaccine for the current influenza season.

(a) Licensed hospitals that report HCW influenza vaccination data to NHSN may confer rights to the Department to HCW influenza vaccination data (excluding any patient identifiers) to fulfill this reporting requirement.

(b) Licensed hospitals that do not confer rights to the Department for HCW influenza vaccination data through NHSN shall report HCW influenza vaccination data online to the Department through the Utah Facility Online Reporting System (UFORS). Facilities may contact the Bureau of Epidemiology at (801) 538-6191 with questions about UFORS, to report a problem, or to obtain instructions for using the system.

(c) Influenza vaccination rates reported to UFORS shall be measured using complete enumeration of all HCWs in the facility during the season and the number of them who were vaccinated during that season.

(d) Licensed long term care facilities shall report HCW influenza vaccination data according to requirements in Utah Administrative Code R432-40, the Long-Term Care Facility Immunizations Rule.

R386-705-5. Health Care Associated Infection Prevention.

Each facility required to share data with the Department as described in R386-705-3 shall implement processes to prevent the incidence of health care associated infections.

(1) The processes shall include at least one intervention that is proven by scientifically valid means to be effective in health care associated infection prevention. Interventions that have been recommended by an accepted health authority, including the CDC, or the federal Hospital Infection Control Practices Advisory Committee (HICPAC), meet this requirement.

(2) The facility shall have a system to monitor these processes and shall make information about them available upon request.

R386-705-6. Attestation Required.

Each facility required to share data with the Department as described in R386-705-3 and R386-705-4 shall attest to the implementation and effectiveness of its health care infection prevention program, as described in R386-705-5, and its systems for reporting, as required by this rule, once every three years.

R386-705-7. Penalties.

An entity that violates any provision of this rule may be assessed a penalty as provided in Utah Code Section 26-23-6.

KEY: quality improvement, patient safety, health care, infection controls

December 21, 2012	**26-1-30(2)**
Notice of Continuation December 7, 2012	**26-6-3**
	26-6-7
	26-6-31

R406. Health, Family Health and Preparedness, WIC Services.
R406-100. Special Supplemental Nutrition Program for Women, Infants and Children.
R406-100-1. Incorporations by Reference.

(1) The State WIC Office adopts the standards of the Special Supplemental Nutrition Program for Women, Infants and Children provided in 7 CFR 246, 01/01/2012 edition, which is incorporated by reference.

(2) The State WIC Office incorporates by reference the Fiscal Year 2013 Utah Women, Infants, and Children (WIC) State Plan of Program Operations and Administration including the Utah WIC Policy and Procedures Manual effective October 1, 2012.

R406-100-2. Processing Time Frames.

(1) The standards of 7 CFR 246.7(f)(2) are adopted and incorporated by reference with the following exceptions:

(a) Extensions of the processing time frames may be granted in the following circumstances:

(i) Clinics operating only 2 days a month or less.

(ii) In emergency situations when, for example, an employer in a particular geographic area engages in mass lay-offs of personnel.

(iii) In cases where there is difficulty in appointment scheduling, a time variation of 30 days may be added to or subtracted from the certification intervals for all except participants who are categorically ineligible.

R406-100-3. Uncertified Waiting List.

(1) The standards of 7 CFR 246.7(f)(1) are adopted and incorporated by reference with the following exceptions:

(a) Uncertified Waiting List means a log of names of individuals who have applied for WIC benefits either by phone or walk in, but who have not been determined WIC eligible.

(b) When a clinic begins a priority system, the clinic must begin maintaining waiting lists by priority of individuals who visit or telephone the clinic to request program benefits. If screening appointments are not being taken, the clinic shall use the Uncertified Waiting List log. Applicants are to be placed on the highest potential priority of the uncertified log in chronological order by application date.

(c) For clinic convenience, there are three uncertified priority logs into which all potential applicants may be placed prior to certification. They are Priority I, III, and VI. Priorities II, IV, and V cannot be determined until after the certification process has been completed.

R406-100-4. Certified Waiting List.

The standards of 7 CFR 246.7(e)(1) are adopted and incorporated by reference with the following exceptions:

(1) Certified Waiting List means chronological files of those persons who are determined by the State WIC Office to be WIC eligible, are assigned a priority, and are waiting for funds to become available so they can receive benefits.

(a) After applicants have been determined to be eligible through screening, and are certified, they are placed on the Certified Waiting List according to their highest potential priority. These files are to be placed by priority in chronological order by certification date.

(b) As case load decreases in each clinic, the clinic will send vouchering appointment letters to applicants who are certified and waiting. All individuals in the highest priorities must be served before individuals of a lower priority are served.

(c) All individuals within a priority must be served according to chronological date of their placement on the Waiting List.

R406-100-5. Residence.

The standards of 7 CFR 246.7(b)(2) are adopted and incorporated by reference with the following exceptions:

Each applicant must state that the address given to the clinic is the applicant's current address. The clinic's staff then determines that the address given is within the area served by the agency and within the jurisdiction of the state.

If the applicant is a member of a special population such as homeless individuals or residents of border towns with interstate agreements, these individuals may be served by designated clinics regardless of residency status.

If an applicant applies for services at a clinic and the address given is not within the county or group of counties served from this clinic, the applicant is eligible to be served from this clinic only after the clinic requests and has received approval from the State WIC Office to serve this individual or family.

R406-100-6. Inadequate Income.

The standards of 7 CFR 246.7(d) are adopted and incorporated by reference with the following exceptions:

(1) Each applicant must submit income verification to the clinic regarding the family's income. This is usually determined by bringing in proof of the previous month's gross income, or proof of the yearly gross income.

(2) The clinic staff shall determine whether the gross income given is at or below 185% of the Income Poverty Level established by the federal government.

R406-100-7. Retention of WIC Files.

The standards of 7 CFR 246.25(a)(2), (3) are adopted and incorporated by reference with the following exceptions:

WIC files shall be maintained for federal or state auditors review for the following retention periods:

(1) Files of women participants, infants and children shall be retained for a minimum four years following the end of the fiscal year that their files were closed.

All other records may be destroyed after four years.

R406-100-8. Vendor Monitoring.

The standards of 7 CFR 246.12(i) are adopted and incorporated by reference with the following exceptions:

(1) The State WIC Office may conduct vendor monitoring on all high risk vendors.

(2) The State WIC Office shall determine high risk vendors based on the following criteria:

(a) vendor's redeemed prices are higher than price list;

(b) unusually large percentage of high priced food instruments by vendor;

(c) participant complaints or complaints from the clinic or other vendors;

(d) food instrument redemption errors;

(e) accumulation of five or more sanctioning points as listed in each vendor's signed contract under the heading Vendor Sanctions;

(f) vendor out of compliance during monitoring visit/redemption analysis;

(g) complaints involving possible overcharging, fraud or any violation that would cause disqualification for food stamps.

(3) The United States Department of Agriculture, Food and Nutrition Service, Instruction 806-4, which clarifies 7 CFR 246.12(f), and states that federal agencies have immunity from state claims or review. The Department of Health will not conduct on-site monitoring reviews of commissaries or require claims to be paid.

(4) Copies of Instruction 806-4 are available at the State WIC Office.

KEY: nutrition, women, children, infants
December 27, 2012 26-1-15

Notice of Continuation February 2, 2012

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Involved with child care" means to do any of the following at or for a facility with a child care license or certificate issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(e) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

(6) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.

(7) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(8) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3. Submission of Background Screening Information.

(1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(2) The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within five days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4) Fingerprint cards are not required if:

(a) the covered individual has resided in Utah continuously for the past five years;

(b) the covered individual is less than 23 years of age, and has resided in Utah continuously since the individual's 18th birthday; or

(c) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time.

R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b) ;

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed or certified child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee or certificate holder ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed or certified child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee or certificate holder and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee or certificate holder and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-7. Emergency Providers.

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, and does not have a supported finding from the Department of Human Services.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities, background screening
January 1, 2013 26-39
Notice of Continuation August 3, 2012

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-50. Residential Certificate Child Care.
R430-50-1. Legal Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of residentially certified child care providers who care for one to eight children in their home. It establishes minimum requirements for the health and safety of children in the care of residentially certified providers.

R430-50-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, and saliva.

(2) "Certificate holder" means the person holding a Department of Health child care certificate.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(10) "Parent" means the parent or legal guardian of a child in care.

(11) "Physical abuse" means causing nonaccidental physical harm to a child.

(12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(13) "Provider" means the certificate holder or a substitute.

(14) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(15) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(16) "School age" means kindergarten and older age children.

(17) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(18) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(19) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(20) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(21) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(22) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(23) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.

(24) "Toddler" means a child aged 12 months but less than 24 months.

(25) "Unrelated children" means children who are not related children.

(26) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(27) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-50-3. Certificate Required.

(1) A person must either be certified under this rule or licensed under R430-90, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not issue certificates, nor is a certificate required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-50-4. Indoor Environment.

(1) The certificate holder shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the certificate holder shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(4) The certificate holder shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(5) For certificate holders who receive an initial certificate after 1 September 2008 there shall be at least 35 square feet of indoor play space for each child, including the providers' related children who are ages four through twelve and not counted in the provider to child ratios.

(6) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or

equipment is used:
(a) by children;
(b) for the care of children; or
(c) to store children's materials.
(7) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-50-5. Cleaning and Maintenance.
(1) The certificate holder shall ensure that a clean and sanitary environment is maintained.
(2) The certificate holder shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.
(3) The certificate holder shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.
(4) The certificate holder shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-50-6. Outdoor Environment.
If there is an outdoor play area used by children in care, the following rules apply:
(1) The outdoor play area shall be safely accessible to children.
(2) For certificate holders who received an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.
(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:
(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or
(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.
(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:
(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;
(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;
(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;
(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or
(e) barbed wire within 30 feet of the children's play area.
(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.
(6) When in use by children, the outdoor play area shall be free of animal excrement.
(7) If a fence or barrier is required in Subsections (3) or (4) above, or in Subsections 12(9)(c)(i) or 12(10)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.
(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.
(9) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.
(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.
(11) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.
(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.
(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
(15) The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-50-7. Personnel.
(1) The certificate holder and all substitutes must:
(a) be at least 18 years of age; and
(b) have knowledge of and comply with all applicable laws and rules.
(2) The certificate holder may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the certificate holder.
(3) Substitutes who care for children an average of 10 hours per week or more shall meet the first aid and CPR requirements of this rule.
(4) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the certificate holder may assign an emergency substitute who has not had a criminal background screening to care for the children. The certificate holder may use an emergency substitute for up to 24 hours for each emergency event.
(a) The emergency substitute shall be at least 18 years of age.
(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.
(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the certificate holder that he or she is not disqualified under this subsection.
(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.
(e) The certificate holder shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.
(5) Any new non-emergency substitute or volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:
(a) the certificate holder's emergency and disaster plan;
(b) the current child care certificate rules found in Sections R430-50-11 through 24;
(c) a review of the information in the health assessment for each child in care;
(d) procedure for releasing children to authorized individuals only;

(e) proper clean up of body fluids;

(f) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(g) obtaining assistance in emergencies; and

(h) if the certificate holder accepts infants or toddlers for care, orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(6) The certificate holder shall complete a minimum of 10 hours of child care training each year, based on the certificate date. A minimum of 5 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept on file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Annual training hours shall include the following topics at least once every two years:

(i) a review of all of the current child care certificate rules found in Sections R430-50-11 through 24;

(ii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iii) principles of child growth and development, including development of the brain; and

(iv) positive guidance; and

(c) if the certificate holder accepts infants or toddlers for care, required training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

R430-50-8. Administration.

(1) The certificate holder is responsible for all aspects of the operation and management of the child care program.

(2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the certificate holder or a substitute with authority to act on behalf of the certificate holder shall be present whenever there is a child in care.

(6) Each week, the certificate holder shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The certificate holder shall inform the parents of each child in care and the Department of any changes to the certificate holder's telephone number within 48 hours of the change.

(8) The certificate holder shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The certificate holder shall also mail or fax a written report to the Department within five days of the incident.

(9) The certificate holder shall train and supervise all substitutes to:

(a) ensure their compliance with this rule;

(b) ensure they meet the needs of the children in care as specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-50-9. Records.

(1) The certificate holder shall maintain on-site for review by the Department during any inspection the following general records:

(a) current animal vaccination records as required in R430-50-22(1)(b);

(b) a six week record of child attendance, as required in R430-50-13(3);

(c) a current local health department kitchen inspection;

(d) an initial local fire department clearance for all areas of the home being used for care;

(e) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and each person age 12 and older who resides in the certificate holder's home;

(f) if the certificate holder has been certified for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal; and

(g) if the certificate holder has been certified for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal.

(2) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-50-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-50-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care; and

(d) a six week record of medication permission forms, and a six week record of medications actually administered, as specified in R430-50-17(3) and R430-50-17(5)(f), if medications are administered to any child in care.

(3) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for the certificate holder and each non-emergency substitute:

(a) orientation training documentation for all non-emergency substitutes as required in R430-50-7(5);

(b) annual training documentation for the past two years as required in R430-50-7(6)(a); and

(c) current first aid and CPR certification, as required in R430-50-10(2) and R430-50-20(3)(d).

(4) The certificate holder shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-50-7(5).

(5) The certificate holder shall ensure that information in any child's file is not released without written parental

permission.

R430-50-10. Emergency Preparedness.

(1) The certificate holder shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The certificate holder and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The certificate holder shall have an emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called in the event the certificate holder must leave the home for any reason; and

(4) The certificate holder shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(5) The certificate holder shall conduct fire evacuation drills semi-annually. Drills shall include complete exit of all children and staff from the home.

(6) The certificate holder shall conduct drills for disasters other than fires at least once every 12 months.

(7) The certificate holder shall vary the days and times on which fire and other disaster drills are held.

R430-50-11. Supervision and Ratios.

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

(ii) by in person observation of each sleeping infant at least once every 15 minutes; or

(iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

(a) the certificate holder has prior written permission from the child's parent for the child's participation; and

(b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(5) through (7).

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is

not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-50-13. Parent Notification and Child Security.

(1) The certificate holder shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the certificate holder's home and outdoor area that are used for child care.

(3) The certificate holder shall ensure that a daily attendance record is maintained to document each enrolled child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The certificate holder shall ensure that parents are informed of every incident, accident, or injury involving their child within 24 hours of occurrence.

(6) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(7) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately.

R430-50-14. Child Health.

(1) The certificate holder shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The certificate holder shall not enroll any child for care without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The certificate holder shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The certificate holder shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) acute and chronic medical conditions;

(c) instructions for special or non-routine daily health care;

(d) current medications; and,

(e) any other special health instructions for the certificate holder.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy, that child shall not be given the food or beverage they are allergic to.

(9) The certificate holder shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-50-15. Child Nutrition.

(1) If food service is provided:

(a) The certificate holder shall ensure that his or her meal service complies with local health department food service regulations.

(b) The current week's menu shall be available for parent review.

(2) The certificate holder shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. The provider shall not place food on a bare table.

(4) The certificate holder shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-50-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;

(d) after using the toilet or helping a child use the toilet;

(e) after coming into contact with any body fluid;

(f) after playing with or handling animals;

(g) when coming in from outdoors; and

(h) before administering medication.

(2) The certificate holder shall ensure that each child washes his or her hands with soap and running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with any body fluid; and

(d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) The certificate holder shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(5) The certificate holder shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(6) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(7) The certificate holder shall ensure that all washable toys and materials are cleaned and sanitized as needed.

(8) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The certificate holder shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(9) If a water play table or tub is used, the certificate holder shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(10) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(11) A provider shall promptly change a child's clothing if the child has a toileting accident.

(12) If a child uses a potty chair, the certificate holder shall ensure that it is cleaned and sanitized after each use.

(13) Except for diaper changes, which are covered in Section R430-50-23, the certificate holder shall ensure that the following precautions are taken when cleaning up blood, urine, feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(14) The certificate holder shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(15) The certificate holder shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(16) The certificate holder shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-50-17. Medications.

(1) All over-the-counter and prescription medications shall:

(a) be labeled with the child's name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(2) The certificate holder shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The certificate holder shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(3) The certificate holder shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

(a) the name of the child:

(b) the name of the medication;

(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(d) the parent signature and the date signed.

(4) If the certificate holder keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(5) When administering medication, the person administering the medication shall:

(a) wash his or her hands;

(b) if the parent supplies the medication, check the medication label to confirm the child's name;

(c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) if the certificate holder supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;

(e) administer the medication; and

(f) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(6) The certificate holder shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-50-18. Napping.

(1) Sleeping equipment may not block exits at any time.

R430-50-19. Child Discipline.

(1) The certificate holder shall inform non-emergency substitutes, parents, and children of the certificate holder's behavioral expectations for children.

(2) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.

(3) Disciplinary measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (2) above;

(c) shouting at any child;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-50-20. Activities.

(1) The certificate holder shall offer daily activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The certificate holder shall ensure that the toys and equipment necessary to carry out the activities are accessible to children.

(3) If off-site activities are offered:

(a) the certificate holder shall obtain parental consent for off-site activities in advance;

(b) the certificate holder shall accompany the children and shall take a copy of each child's emergency contact information.

(c) the certificate holder shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And

(e) the certificate holder shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-50-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-50-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) be maintained in a safe condition and have a current vehicle registration and safety inspection;

(d) be maintained in a clean condition; and

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(2) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license, for the type of vehicle being driven, whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's emergency contact information;

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and

(g) ensure that the vehicle is locked during transport.

R430-50-22. Animals.

(1) The certificate holder shall inform parents of the types of animals permitted on the premises.

(2) The certificate holder shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The certificate holder shall have documentation of the vaccinations.

(3) The certificate holder shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The certificate holder shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The certificate holder shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The certificate holder shall ensure that no child in care handles reptiles or amphibians while in care.

R430-50-23. Diapering.

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.

(7) The certificate holder shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-50-24. Infant and Toddler Care.

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

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R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-60. Hourly Child Care Centers.
R430-60-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of hourly child care centers and requirements to protect the health and safety of children in child care centers.

R430-60-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(13) "Infant" means a child aged birth through 11 months of age.

(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin or mineral supplements.

(17) "Parent" means the parent or legal guardian of a child in care.

(18) "Person" means an individual or a business entity.

(19) "Physical Abuse" means causing nonaccidental physical harm to a child.

(20) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(21) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials (ASTM) Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(22) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(23) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(24) "School Age" means kindergarten and older age children.

(25) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(2).

(26) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5b-103(10).

(27) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

(28) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(29) "Toddler" means a child aged 12 months but less than 24 months.

(30) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(31) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R430-60-3. License Required.

(1) A person must be licensed as an hourly child care center if he or she:

(a) provides care in the absence of the child's parent;

(b) provides care in a place other than the provider's home or the child's home;

(c) provides care for five or more children for four or more hours per day, but not on a regular schedule;

(d) provides care for each individual child for less than 24 hours per day;

(e) provides care that is open to children on an ongoing basis for four or more weeks in a year; and

(f) provides care for direct or indirect compensation.

(2) If five or more children attend the center for four or more hours a day on a regularly scheduled ongoing basis, the center must be licensed under R430-100.

R430-60-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) For preschool and younger children, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.

(3) School age children shall have privacy when using the bathroom.

(4) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(5) The provider shall maintain the indoor temperature

between 65 and 82 degrees Fahrenheit.

(6) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children;

(b) for the care of children; or

(c) to store classroom materials.

(9) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R430-60-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R430-60-6. Outdoor Environment.

If the center has an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R430-60-20(2).

(4) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

(8) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 18 inches, it shall have use zones that extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 20 inches, it shall have use zones that extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If loose material is used as protective cushioning, the depth of the material shall be at least 9 inches. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than the height specified in Table 1, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 1

Heights of Designated Play Surfaces That May Be Placed on Grass

Infants and Toddlers	Preschoolers	School Age
Less than 18"	Less than 20"	Less than 30"

(10) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(11) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(12) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(13) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R430-60-7. Personnel.

(1) The center must have a director who is at least 21 years of age and who has one of the following:

(a) an associates, bachelors, or graduate degree in child development, early childhood education, elementary education, or recreation from an accredited college;

(b) a college degree in a related field with documented four courses of higher education completed in child development;

(c) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development

Institute;

(d) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(e) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(f) two years experience in child care, elementary education, or a related field.

(2) All caregivers included in the required caregiver to child ratios shall be at least 18 years of age.

(3) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(4) Each new director, assistant director, caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) specific job responsibilities;

(b) the center's emergency and disaster plan;

(c) the current child care licensing rules found in Sections R430-60-11 through 24;

(d) procedure for releasing children to authorized individuals only;

(e) proper clean up of body fluids;

(f) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(g) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(h) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(5) The following individuals shall complete a minimum of 10 hours of child care training each year, based on the center's license date:

(a) the director;

(b) all caregivers;

(c) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(d) all volunteers that the provider includes in the provider to child ratio.

(6) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(7) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicense date.

(8) Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R430-60-11 through 24;

(b) a review of the center's policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

(9) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

(10) A minimum of 5 hours of the required annual in-service training shall be face-to-face instruction.

R430-60-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) There shall be a working telephone at the facility, and the center director shall inform the Department of any changes to the center's telephone number within 48 hours of the change.

(8) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.

(9) The center director shall train and supervise all staff to:

(a) ensure their compliance with this rule;

(b) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(10) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) discipline of children, including behavioral

expectations of children and discipline methods used; and

(i) how long a child will cry before the parent is contacted.

(11) The provider shall ensure that the written policies and procedures are available for review by staff and the Department during business hours.

R430-60-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-60-10(9) and (11);

(b) current animal vaccination records as required in R430-60-22(2);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and

(g) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent; and

(vi) medical conditions, including a certification that all immunizations are current.

(b) a transportation permission form, if the center provides transportation services;

(c) a six week record of medication permission forms, and a six week record of medications actually administered; and

(d) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) approved initial CBS/LIS Consent and Release of Liability for Child Care" form;

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R430-60-10(2), R430-60-20(2)(d), and R430-60-21(2).

R430-60-10. Emergency Preparedness.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the center is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The center shall vary the days and times on which fire and other disaster drills are held.

R430-60-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) The licensee must maintain minimum care giver to child ratios as provided in Table 2.

TABLE 2

Caregiver to Child Ratios

Caregivers	Children	Limits for Mixed Ages
1	12	No children under age 2
1	8	2 children under age 2
1	6	3 children under age 2

(4) Regardless of the number of other children and the minimum ratios in Table 2, if only two care givers are present, the facility may not care for more than four children under the age of two.

(5) For no more than 20 minutes, the minimum ratios in Table 2 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(6) An hourly program that exceeds the ratio in Table 2, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(7) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(8) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center.

R430-60-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(3) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(4) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(5) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(8) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(10) There shall be no trampolines on the premises that are accessible to any child in care.

(11) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(12) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R430-60-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and

shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the program with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs him or herself out of the program, a copy of the report shall be mailed to the parent, or given to the parent the next day the child attends the program.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R430-60-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

R430-60-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) The provider shall offer meals or snacks at least once every three hours that a child is in care.

(c) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(2) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, the provider shall ensure that the child is not given that food or drink.

(3) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed. The provider shall ensure that a child in care does not consume a food or beverages that was brought in for another child.

R430-60-16. Infection Control.

(1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding children;

(c) before and after diapering a child;

(d) after using the toilet or helping a child use the toilet;

(e) before administering medication;

(f) after coming into contact with body fluids;

(g) after playing with or handling animals;

(h) when coming in from outdoors; and

(h) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with body fluids;

(d) after playing with animals; and

(e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(6) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(7) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(8) Persons with contagious TB shall not work or volunteer in the center.

(9) Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the center; and

(b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(10) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.

(11) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(12) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(13) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R430-60-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in subsections (7) and (8) below.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's full name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication

permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

(a) the child's name;

(b) the name of the medication;

(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

(a) wash their hands;

(b) check the medication label to confirm the child's name;

(c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) administer the medication; and

(e) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-60-18. Napping.

If the center uses sleeping equipment for rest time, the following rules apply:

(1) The provider shall maintain sleeping equipment in good repair.

(2) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.

(3) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.

(4) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.

(5) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.

(6) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.

(7) Cots and mats may not block exits.

R430-60-19. Child Discipline.

(1) The provider shall inform caregivers and children of the center's behavioral expectations for children.

(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.

(4) Discipline measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-60-20. Activities.

(1) The provider shall offer a variety of activities and materials that are appropriate to the age and development of the children accepted for care.

(2) If off-site activities are offered:

(a) the provider shall obtain written parental consent for each activity in advance;

(b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:

(i) the child's name;

(ii) the parent's name and phone number;

(iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;

(iv) the names of people authorized by the parents to pick up the child; and

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

(3) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R430-60-21. Transportation.

(1) Any vehicle used for transporting children shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) have a current vehicle registration and safety inspection;

(d) be maintained in a safe and clean condition;

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(f) contain a first aid kit; and

(g) contain a body fluid clean up kit.

(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The adult transporting children shall:

(a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;

(b) have with them written emergency contact information for all of the children being transported;

(c) ensure that each child being transported is wearing an appropriate individual safety restraint;

(d) ensure that no child is left unattended by an adult in

the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R430-60-22. Animals.

(1) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(2) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.

(3) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) Children younger than school age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(5) If a school age child assists in the cleaning of animals or animal cages, the child shall wash his or her hands immediately after handling the animal or animal equipment.

(6) There shall be no animals or animal equipment in food preparation or eating areas.

(7) Children shall not handle reptiles or amphibians.

R430-60-23. Diapering.

If the center diapers children, the following applies:

(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.

(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(3) Caregivers shall not leave children unattended on the diapering surface.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(6) There shall be a handwasing sink used exclusively for diapering and handwashing after diapering.

(7) Caregivers shall clean and sanitize the diapering surface after each diaper change.

(8) Caregivers shall wash their hands before and after each diaper change.

(9) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.

(10) The provider shall daily clean and sanitize containers where soiled diapers are placed.

(11) If cloth diapers are used:

(a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diaper service container.

(12) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

R430-60-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) The provider shall clean and sanitize high chair trays prior to each use.

(3) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) Baby food, formula, and breast milk for infants that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(5) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(6) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.

(7) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(8) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(9) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(10) Cribs used by a child in care must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail; and

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.

(11) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(12) Walkers with wheels are prohibited.

(13) Infants and toddlers shall not have access to objects made of styrofoam.

(14) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(15) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(16) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(17) Mobile infants and toddlers shall have freedom of movement in a safe area.

(18) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child plays with it; and

(c) after being contaminated by body fluids.

KEY: child care facilities, hourly child care centers
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Notice of Continuation June 6, 2008

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-70. Out of School Time Child Care Programs.
R430-70-1. Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of out of school time programs and requirements to protect the health and safety of children in these programs.

R430-70-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body Fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and that is at least 2" by 2" in size.

(8) "Direct Supervision" means the caregiver must be able to hear all of the children and must be near enough to intervene when necessary.

(9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(13) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(14) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(15) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

(16) "Parent" means the parent or legal guardian of a child in care.

(17) "Person" means an individual or a business entity.

(18) "Physical Abuse" means causing nonaccidental physical harm to a child.

(19) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(20) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidently or deliberately passing through the barrier.

(21) "Protective cushioning" means cushioning material that is approved by the American Society for Testing and Materials. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(22) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(23) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(24) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1(2).

(25) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(26) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(27) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(28) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio, unless the volunteer meets all of the caregiver requirements of this rule.

R430-70-3. License Required.

(1) A person or persons must be licensed to provide child care if:

(a) they provide care in the absence of the child's parent;

(b) they provide care for five or more children;

(c) they provide care in a place other than the provider's home or the child's home;

(d) the program is open to children on an ongoing basis, on three or more days a week and for 30 or more days in a calendar year; and

(e) they provide care for direct or indirect compensation.

(2) A person or persons may be licensed as an out of school time program under this rule if:

(a) they either provide care for two or more hours per day on days when school is in session for the child in care, and four or more hours per day on days when school is not in session for the child in care; or they provide care for four or more hours per day on days when school is not in session; and

(b) all of the children who attend the program are at least five years of age.

R430-70-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) There shall be at least two working toilets and two working sinks accessible to the children in care.

(3) If there are more than 50 children in attendance, there shall be one additional working sink and one additional working toilet for each additional group of 1 to 25 children.

(4) Children shall have privacy when using the bathroom.

(5) For buildings newly licensed under this rule after 30 June 2010 there shall be a working hand washing sink in each classroom.

(6) In gymnasiums, and in classrooms in buildings licensed before 30 June 2010, hand sanitizer must be available to children in care if there is not a handwashing sink in the room.

(7) All rooms and occupied areas in the building shall be ventilated by mechanical ventilation or by windows that open

and have screens.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows and glass doors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children;

(b) for the care of children; or

(c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R430-70-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R430-70-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area used by children shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, harmful objects, harmful substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

(8) Children shall have unrestricted access to drinking water whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards by the dates specified in Subsection (10) below.

(a) All stationary play equipment used by children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 30 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(b) Protective cushioning is required in all use zones.

(c) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	Not Allowed	9"	Not Allowed	6"
Over 7' up to 8'	12"	Not Allowed	12"	Not Allowed	6"
Over 8' up to 9'	12"	Not Allowed	12"	Not Allowed	6"
Over 9' up to 10'	Not Allowed	Not Allowed	12"	Not Allowed	6"
Over 10' up to 11'	Not Allowed	Not Allowed	Not Allowed	Not Allowed	6"
Over 11' up to 12'	Not Allowed	Not Allowed	Not Allowed	Not Allowed	6"

(d) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Double Shredded Wood Chips	Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"

Over 5' up to 6'	6"	6"	6"	
Over 6' up to 7'	9"	6"	9"	
Over 7' up to 8'	12"	9"	9"	
Over 8' up to 9'	12"	9"	9"	
Over 9' up to 10'	12"	9"	9"	
Over 10' up to 11'	12"	12"	12"	
Over 11'	12"	Not Allowed	Not Allowed	

(e) If wood products are used as cushioning material:

(i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and

(ii) there shall be adequate drainage under the material.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than 30 inches and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

(h) Stationary play equipment shall have protective barriers on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(i) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(j) There shall be no protrusion or strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(k) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(l) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(10) The outdoor play equipment rules specified in Subsection (9) above must be in compliance by the following dates:

(a) by December 31, 2009: R430-70-6(9)(b-f). There is protective cushioning in all existing use zones that meets the requirements for depth and ASTM Standards.

(b) by December 31, 2010:

(i) R430-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard surface, unless equipment is installed in concrete or asphalt footings.

(ii) R430-70-6(9)(j). There are no protrusion or strangulation hazards in or adjacent to the use zone of any piece of stationary play equipment.

(c) By December 31, 2011: R430-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard surface.

(d) By December 31, 2012:

(i) R430-70-6(9)(h). Protective barriers are installed on all stationary play equipment that requires them, and the barriers meet the required specifications.

(ii) R430-70-6(9)(i). There are no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(iii) R430-70-6(9)(k). There are no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(e) By December 31, 2013:

(i) R430-70-6(9)(a)(i-vi). All stationary play equipment has use zones that meet the required measurements.

(ii) R430-70-6(9)(l). There are no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R430-70-7. Personnel.

(1) The program must have a director who is at least 21 years of age and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of coursework in childhood development, elementary education, or a related field;

(b) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(c) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of coursework in childhood development, elementary education, or a related field; or

(ii) valid proof of completion of the following six Utah Career Ladder courses offered through Child Care Resource and Referral: Child Development: Ages and Stages; Advanced Child Development; School Age Course 1; School Age Course 2; School Age Course 3; and School Age Course 4.

(2) All caregivers shall be at least 18 years of age.

(3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with children.

(5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(6) Whenever there are more than 8 children at the program, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the program, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.

(7) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented and shall include the following topics:

(a) job description and duties;

(b) the program's written policies and procedures;

(c) the program's emergency and disaster plan;

(d) the current child care licensing rules found in Sections R430-70-11 through 22;

(e) introduction and orientation to the children assigned to

the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the program's emergency and disaster plan.

(8) The program director, assistant director, all caregivers, and substitutes who work an average of 10 hours a week or more, as averaged over any three month period, shall complete a minimum of 2 hours of training for each month during which they are employed, or 20 hours of training each year, based on the program's license date.

(a) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Annual training hours shall include the following topics:

(i) a review of the current child care licensing rules found in Sections R430-70-11 through 22;

(ii) a review of the program's written policies and procedures and emergency and disaster plans, including any updates;

(iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iv) principles of child growth and development, including development of the brain; and

(v) positive guidance.

(9) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R430-70-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the program director or a designee with authority to act on behalf of the program director shall be present at the facility whenever the program is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) Each week, the program director shall be on-site at the program during operating hours for at least 50% of the time the program is open to children, in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.

(8) The program director must have sufficient freedom from other responsibilities to manage the program and respond to emergencies.

(9) There shall be a working telephone at the facility, and the program director shall inform each child's parent and the Department of any changes to the program's telephone number within 48 hours of the change.

(10) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.

(11) The duties and responsibilities of the program director include the following:

(a) appoint one or more individuals who meet the background screening and training requirements of this rule to be a director designee, with authority to act on behalf of the program director in his or her absence;

(b) train and supervise staff to:

(i) ensure their compliance with this rule;

(ii) ensure they meet the needs of the children in care as specified in this rule; and

(iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) supervision and protection of children at all times, including when they are using the bathroom, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the program has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the program releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the program allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the program;

(h) discipline of children, including behavioral expectations of children and discipline methods used;

(i) transportation to and from off-site activities, or to and from home, if the program offers these services; and

(j) if the program offers transportation to or from school, policies addressing:

(i) how long children will be unattended before and after school;

(ii) what steps will be taken if children fail to meet the vehicle;

(iii) how and when parents will be notified of delays or problems with transportation to and from school; and

(iv) the use of size-appropriate safety restraints.

(k) if the program has a computer that is connected to the internet and that is accessible to any child in care:

(i) written policies for parents explaining how children's computer use is monitored; and

(ii) a signed parent permission form for each child who is allowed to use the computer.

(13) The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

R430-70-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-70-10(9) and R430-70-10(11);

(b) current animal vaccination records as required in R430-70-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) if the licensee has been licensed for one or more years, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes the licensee and all current providers, caregivers, and volunteers; and:

(g) if the licensee has been licensed for one or more years, the most recent criminal background "Disclosure and Consent Statement" which includes the licensee and all current providers, caregivers, and volunteers.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R430-70-14(5);

(c) a transportation permission form, if the program provides transportation services;

(d) a six week record of medication permission forms, and a six week record of medications actually administered; and

(e) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form;

(c) a six week record of days and hours worked;

(d) orientation training documentation for caregivers, and for volunteers who work at the program at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R430-70-10(2), R430-70-20(5)(d), and R430-70-21(2).

R430-70-10. Emergency Preparedness.

(1) The provider shall post the program's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the facility.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification.

(3) The program shall maintain first aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the facility is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the facility is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the program's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly during each month that the program is open. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months that the program is open.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The program shall vary the days and times on which fire and other disaster drills are held.

R430-70-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children present.

(4) The licensee shall maintain a minimum caregiver to child ratio of one caregiver for every 20 children.

(5) The licensee shall maintain a maximum group size of 40 children per group.

(6) The children of the licensee or any employee are not counted in the caregiver to child ratios when the parent of the child is working at the program, but are counted in the maximum group size.

R430-70-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames; and

(h) razors or similarly sharp blades.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) Indoor stationary gross motor play equipment, such as slides and climbers, shall not have a designated play surface that exceeds 5-1/2 feet in height. If such equipment has an elevated designated play surface that is 3 feet or higher it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(8) There shall be no trampolines on the premises that are accessible to children in care.

(9) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

R430-70-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the facility for parents' review during business hours.

(2) Parents shall have access to the facility and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the facility or leave the facility:

(a) Each child must be signed in and out of the facility, including the date and time the child arrives or leaves.

(b) Children may sign themselves in and out of the program only with written permission from the parent.

(c) Persons signing children into the facility shall use identifiers, such as a signature, initials, or electronic code.

(d) Persons signing children out of the facility shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(e) Only parents or persons with written authorization from the parent may take any child from the facility. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the program director or director designee, and the person picking the child up shall sign the report on the day of occurrence. If the child signs him or herself out of the program, a copy of the report shall be mailed to the parent.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R430-70-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in program vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any child to the program without a signed health assessment completed by the parent which shall include:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the caregiver.

(5) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R430-70-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the program's meal service complies with local health department food service regulations.

(b) Foods served by programs not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Programs not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall post the current week's menu for parent review.

(2) On days when care is provided for three or more hours, the provider shall offer each child in care a meal or snack at least once every three hours.

(3) The provider shall serve children's food on dishes or

napkins, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) If any child in care has a food allergy, the provider shall ensure that all caregivers who serve food to children are aware of the allergy, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R430-70-16. Infection Control.

(1) All staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before handling or preparing food;

(b) before eating meals and snacks or feeding children;

(c) after using the toilet;

(d) before administering medication;

(e) after coming into contact with body fluids;

(f) after playing with or handling animals; and

(g) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with body fluids; and

(d) after playing with animals.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures in each bathroom, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work or volunteer in the program.

(12) Children's clothing shall be changed promptly if they have a toileting accident.

(13) Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the facility; and

(b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) The facility shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(15) The program shall not care for children who are ill with a suspected infectious disease, except when a child shows signs of illness after arriving at the facility.

(16) The provider shall separate children who develop signs of a suspected infectious disease after arriving at the facility from the other children in a safe, supervised location.

(17) The provider shall contact the parents of children who are ill with a suspected infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(18) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(19) The provider shall post a parent notice at the facility when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R430-70-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's full name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

(a) the name of the child;

(b) the name of the medication;

(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the facility that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

(a) wash their hands;

(b) check the medication label to confirm the child's name;

(c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that

recommended by the health care provider or the manufacturer;
(d) administer the medication; and
(e) immediately record the following information:
(i) the date, time, and dosage of the medication given;
(ii) the signature or initials of the provider who administered the medication; and,
(iii) any errors in administration or adverse reactions.
(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-70-18. Napping.
If the program offers children the opportunity for rest:
(1) The provider shall maintain sleeping equipment in good repair.
(2) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
(3) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
(4) Sleeping equipment may not block exits at any time.

R430-70-19. Child Discipline.
(1) The provider shall inform caregivers, parents, and children of the program's behavioral expectations for children.
(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.
(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.
(4) Discipline measures shall not include any of the following:
(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
(c) shouting at children;
(d) any form of emotional abuse;
(e) forcing or withholding of food, rest, or toileting; and,
(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-70-20. Activities.
(1) The provider shall post a daily schedule of activities. The daily schedule shall include, at a minimum, meal, snack, and outdoor play times.
(2) On days when children are in care for four or more hours, daily activities shall include outdoor play if weather permits.
(3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities.
(4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.
(5) If off-site activities are offered:
(a) the provider shall obtain written parental consent for each activity in advance;
(b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
(i) the child's name;
(ii) the parent's name and phone number;
(iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
(iv) the names of people authorized by the parents to pick up the child; and
(v) current emergency medical treatment and emergency medical transportation releases;
(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;
(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification;
(e) caregivers shall take a first aid kit with them;
(f) children shall wear or carry with them the name and phone number of the program, but children's names shall not be used on name tags, t-shirts, or other identifiers; and
(g) caregivers shall provide a way for children to wash their hands as specified in R430-70-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.
(6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R430-70-21. Transportation.
(1) Any vehicle that is used for transporting children in care, except public bus or train, shall:
(a) be enclosed;
(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
(c) have a current vehicle registration and safety inspection;
(d) be maintained in a safe and clean condition;
(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
(f) contain a first aid kit; and
(g) contain a body fluid clean up kit.
(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification.
(3) The adult transporting children shall:
(a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
(b) have with them written emergency contact information for all of the children being transported;
(c) ensure that each child being transported is wearing an appropriate individual safety restraint as required by Utah law;
(d) ensure that no child is left unattended by an adult in the vehicle;
(e) ensure that all children remain seated while the vehicle is in motion;
(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,
(g) ensure that the vehicle is locked during transport.

R430-70-22. Animals.
(1) The provider shall inform parents of the types of animals permitted at the facility.
(2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
(3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The program shall have documentation of the vaccinations.
(4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(5) There shall be no animals or animal equipment in food preparation or eating areas.

(6) Children shall not handle reptiles or amphibians.

KEY: child care facilities, child care, child care centers, out of school time child care programs
January 1, 2013 26-39

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in the care of licensed family providers.

R430-90-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, or saliva.

(2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing nonaccidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(14) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.

(15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(17) "School age" means kindergarten and older age children.

(18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(21) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(23) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.

(24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(25) "Toddler" means a child aged 12 months but less than 24 months.

(26) "Unrelated children" means children who are not related children.

(27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-90-3. License Required.

(1) A person must either be licensed under this rule or certified under R430-50, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-90-4. Indoor Environment.

(1) The licensee shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation or by windows that open and have screens.

(5) The licensee shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The licensee shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor play

space for each child, including providers' related children who are ages four through twelve.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children;

(b) for the care of children; or

(c) to store children's materials.

(9) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-90-5. Cleaning and Maintenance.

(1) The licensee shall ensure that a clean and sanitary environment is maintained.

(2) The licensee shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The licensee shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The licensee shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-90-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or Subsections 12(10)(c)(i) or 12(11)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.

(9) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt, and shall have a 3' use zone that is free of hard surfaces. The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.

(11) The licensee shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.

(16) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-90-7. Personnel.

(1) The licensee and all substitutes and caregivers must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) All assistant caregivers shall:

(a) be at least 16 years of age;

(b) work under the immediate supervision of a provider who is at least 18 years of age; and

(c) have knowledge of and comply with all applicable laws and rules.

(3) Assistant caregivers may be included in provider to child ratios, but only if there is also another provider present in the home who is 18 years of age or older.

(4) Assistant caregivers shall meet the training requirements of this rule.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the licensee.

(6) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid, and CPR requirements of this rule.

(7) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the licensee may assign an emergency substitute who has not had a criminal background screening to care for the children. A licensee may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid, and CPR requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the licensee that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The licensee shall make reasonable efforts to minimize

the time that the emergency substitute has unsupervised contact with the children in care.

(8) Any new caregiver, volunteer, or non-emergency substitute shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

(a) specific job responsibilities;

(b) the licensee's written policies and procedures;

(c) the licensee's emergency and disaster plan;

(d) the current child care licensing rules found in Sections R430-90-11 through 24;

(e) introduction and orientation to the children in care;

(f) a review of the information in the health assessment for each child in care;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies; and

(k) if the licensee accepts infants or toddlers for care, orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(9) Substitutes who care for children an average of 10 hours per week or more, the licensee, and all caregivers shall complete a minimum of 20 hours of child care training each year, based on the license date. A minimum of 10 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All caregivers and non-emergency substitutes who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the relicense date.

(c) Annual training hours shall include the following topics at least once every two years:

(i) a review of all of the current child care licensing rules found in Sections R430-90-11 through 24;

(ii) a review of the licensee's written policies and procedures and emergency and disaster plan, including any updates;

(iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iv) principles of child growth and development, including development of the brain; and

(v) positive guidance; and

(d) if the licensee accepts infants or toddlers for care, required training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

R430-90-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the child care program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The licensee shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The licensee shall take all reasonable measures to protect the safety of each child in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the licensee or a substitute with authority to act on behalf of the licensee shall be present whenever there is a child in care.

(6) Each week, the licensee shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The licensee shall inform the parents of each child in care and the Department of any changes to the licensee's telephone number within 48 hours of the change.

(8) The licensee shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The licensee shall also mail or fax a written report to the Department within five days of the incident.

(9) The licensee shall establish, and shall ensure that all providers follow, written policies and procedures for the health and safety of each child in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of each child at all times, including when he or she is sleeping, outdoors, and during off-site activities;

(b) procedures to account for each child's attendance and whereabouts;

(c) the licensee's policy and practices regarding sick children, and whether they are allowed to be in care;

(d) recognizing early signs of illness and determining when there is a need for exclusion from care;

(e) discipline of children, including behavioral expectations of children and discipline methods used;

(f) transportation to and from off-site activities, or to and from home, if the licensee offers these services; and

(g) if the program offers transportation to or from school, policies addressing:

(i) how long a child will be unattended by a provider before school starts and after school lets out;

(ii) what steps will be taken if a child fails to meet the vehicle; and

(iii) how and when parents will be notified of delays or problems with transportation to and from school.

(10) The licensee shall ensure that the written policies and procedures are available for review by parents and the Department during business hours.

(11) The licensee shall train and supervise all caregivers and substitutes to:

(a) ensure their compliance with this rule;

(b) ensure they meet the needs of the children in care as specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-90-9. Records.

(1) The licensee shall maintain on-site for review by the Department during any inspection the following general records:

(a) documentation of the previous 12 months of quarterly fire drills and annual disaster drills as specified in R430-90-10(9) and R430-90-10(11);

(b) current animal vaccination records as required in R430-90-22(2)(b);

(c) a six week record of child attendance as required in R430-90-13(3);

(d) a current local health department kitchen inspection;

(e) an initial local fire department clearance for all areas of the home being used for care;

(f) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and

each person age 12 and older who resides in the licensee's home;

(g) if the licensee has been licensed for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal; and

(h) if the licensee has been licensed for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal.

(2) The licensee shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-90-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-90-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care;

(d) a six week record of medication permission forms, and a six week record of medications actually administered as specified in R430-90-17(4) and R430-90-17(6)(f), if medications are administered to any child in care; and

(e) a six week record of incident, accident, and injury reports.

(3) The licensee shall maintain on-site for review by the Department during any inspection the following records for the licensee and each non-emergency substitute and caregiver:

(a) orientation training documentation for all non-emergency substitutes and caregivers as required in R430-90-7(8);

(b) annual training documentation for the past two years, for the licensee and all non-emergency substitutes and caregivers, as required in R430-90-7(9)(a); and

(c) current first aid and CPR certification, as required in R430-90-10(2), R430-90-20(3)(d), and R430-90-21(2).

(4) The licensee shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-90-7(8).

(5) The licensee shall ensure that information in any child's file is not released without written parental permission.

R430-90-10. Emergency Preparedness.

(1) The licensee shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The licensee and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(4) The licensee shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called in the event the licensee must leave the home for any reason;

(f) an emergency relocation site where children will be housed if the licensee's home is uninhabitable;

(g) provisions for emergency supplies, including at least food, water, a first aid kit, and diapers if the licensee accepts diapered children for care; and

(h) procedures for ensuring adequate supervision of children during emergency situations, including while at the emergency relocation site.

(5) The licensee shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The licensee shall review the emergency and disaster plan annually, and update it as needed. The licensee shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by parents and the Department during business hours.

(8) The licensee shall conduct fire evacuation drills quarterly. Drills shall include complete exit of all children and staff from the home.

(9) A provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the total time to complete the evacuation; and

(d) any problems encountered.

(10) The licensee shall conduct drills for disasters other than fires at least once every 12 months.

(11) A provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(12) The licensee shall vary the days and times on which fire and other disaster drills are held.

R430-90-11. Supervision and Ratios.

(1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and there is a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

(ii) by in person observation of each sleeping infant at least once every 15 minutes; or

(iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A

provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:

(a) the licensee has prior written permission from the child's parent for the child's participation; and

(b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.

(5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.

(a) Children in care include the providers' own children under the age of four.

(b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.

(6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.

(7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).

(8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-4	8 children	12
5	7 children	12
6	6 children	12
7	5 children	12
8	4 children	12
9	3 children	12
10	2 children	12
11	1 child	12

TABLE 2

MAXIMUM GROUP SIZE WITH 2 PROVIDERS

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-8	16 children	24
9	15 children	24
10	14 children	24
11	13 children	24
12	12 children	24
13	11 children	24
14	10 children	24
15	9 children	24
16	8 children	24
17	7 children	24
18	6 children	24
19	5 children	24
20	4 children	24
21	3 children	24
22	2 children	24
23	1 child	24

R430-90-12. Injury Prevention.

(1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The licensee shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier

at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-90-13. Parent Notification and Child Security.

(1) The licensee shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the licensee's home and outdoor area that are used for child care.

(3) The licensee shall ensure that a daily attendance record is maintained each day there is a child in care, to document each child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The licensee shall ensure that parents are given a written report of every serious incident, accident, or injury involving their child on the day of occurrence. A provider and the person picking up the child shall sign the report to acknowledge that he or she has received it.

(6) The licensee shall ensure that parents are notified verbally of minor accidents and injuries on the day of occurrence.

(7) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(8) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

R430-90-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The licensee shall not enroll any child for care without documentation of:

(a) proof of current immunizations as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The licensee shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The licensee shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) known food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and

(f) any other special health instructions for the licensee.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, that child shall not be given the food or beverage they are allergic to.

(9) The licensee shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-90-15. Child Nutrition.

(1) If food service is provided:

(a) The licensee shall ensure that his or her meal service complies with local health department food service regulations.

(b) Foods served by license holders not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, current menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) License holders not currently participating and in good standing with the CACFP shall keep a one week record of foods served at each meal or snack.

(d) The current week's menu shall be available for parent review.

(2) The licensee shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. Providers shall not place food on a bare table.

(4) The licensee shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-90-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;

(d) after using the toilet or helping a child use the toilet;

(e) after coming into contact with any body fluid;

(f) after playing with or handling animals;

(g) when coming in from outdoors; and

(h) before administering medication.

(2) The licensee shall ensure that each child washes his or her hands with soap and running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with any body fluid; and

(d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands. If cloth towels are used, they shall not be shared by children, providers, or volunteers, and a provider shall wash the towels daily.

(5) The licensee shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(6) The licensee shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(8) The licensee shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The licensee shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(10) If a water play table or tub is used, the licensee shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(12) A provider shall promptly change a child's clothing if the child has a toileting accident.

(13) If a child's clothing is wet or soiled from any body fluid, the licensee shall ensure that:

(a) the clothing is washed and dried; or

(b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) If a child uses a potty chair, the licensee shall ensure that it is cleaned and sanitized after each use.

(15) Except for diaper changes, which are covered in Section R430-90-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-90-16(13), the licensee shall ensure that the following precautions are taken when cleaning up blood, urine, feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(16) The licensee shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(17) The licensee shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(18) The licensee shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-90-17. Medications.

(1) Only a provider trained in the administration of medications as specified in this rule may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) The licensee shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The licensee shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The licensee shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The

permission form must include:
(a) the name of the child;
(b) the name of the medication;
(c) written instructions for administration; including:
(i) the dosage;
(ii) the method of administration;
(iii) the times and dates to be administered; and
(iv) the disease or condition being treated; and
(d) the parent's signature and the date signed.
(5) If the licensee keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:
(a) prior written consent; or
(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.
(6) When administering medication, the person administering the medication shall:
(a) wash his or her hands;
(b) if the parent supplies the medication, check the medication label to confirm the child's name;
(c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
(d) if the licensee supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;
(e) administer the medication; and
(f) immediately record the following information:
(i) the date, time, and dosage of the medication given;
(ii) the signature or initials of the provider who administered the medication; and,
(iii) any errors in administration or adverse reactions.
(7) The licensee shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-90-18. Napping.
(1) The licensee shall ensure that children in care are offered a daily opportunity for rest or sleep in an environment that provides a low noise level and freedom from distractions.
(2) If the licensee has a scheduled nap time for children, it shall not exceed two hours daily.
(3) If a child uses sleeping equipment, sleeping bags, a pillow, a pillow case, sheets, or blankets while in care, the licensee shall meet the following requirements:
(a) The licensee shall maintain sleeping equipment in good repair.
(b) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are clearly assigned to and used by an individual child, a provider must clean and sanitize them as needed, but at least weekly.
(c) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are not clearly assigned to and used by an individual child, a provider must clean and sanitize them prior to each use.
(4) If a child uses a pillow without a pillow case while in care, then the provider must clean and sanitize the pillow as required in Subsection (3). If a child uses a pillow with a pillow case while in care, then the provider must clean and sanitize the pillow case as required in Subsection (3).
(5) Sleeping equipment may not block exits at any time.

R430-90-19. Child Discipline.
(1) The licensee shall inform non-emergency substitutes, caregivers, parents, and children of the licensee's behavioral expectations for children.
(2) Providers and volunteers may discipline children using positive reinforcement and redirection, and by setting clear limits that promote a child's ability to become self-disciplined.
(3) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.
(4) Disciplinary measures shall not include any of the following:
(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above;
(c) shouting at any child;
(d) any form of emotional abuse;
(e) forcing or withholding of food, rest, or toileting; and,
(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-90-20. Activities.
(1) The licensee shall develop a daily activity plan that offers activities to support each child's healthy physical, social-emotional, and cognitive-language development.
(2) The licensee shall ensure that the toys and equipment needed to carry out the activity plan are accessible to children.
(3) If off-site activities are offered:
(a) the licensee shall obtain parental consent for off-site activities in advance;
(b) a provider who meets all of the caregiver requirements of this rule shall accompany the children and shall take a copy of each child's admission form as specified in Subsection R430-90-9(2)(a).
(c) a provider shall maintain required provider to child ratios and direct supervision during the activity;
(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And
(e) a provider shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-90-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.
(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-90-21. Transportation.
(1) Any vehicle used for transporting any child in care shall:
(a) be enclosed;
(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
(c) be maintained in a safe condition and have a current vehicle registration and safety inspection;
(d) be maintained in a clean condition;
(e) maintain temperatures between 60-90 degrees Fahrenheit when in use; and
(f) contain first aid supplies, including at least antiseptic, band-aids, and tweezers.
(2) At least one adult in each vehicle transporting any

child in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license for the type of vehicle being driven whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's admission form as specified in Subsection R430-90-9(2)(a);

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R430-90-22. Animals.

(1) The licensee shall inform parents of the types of animals permitted on the premises.

(2) The licensee shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The licensee shall have documentation of the vaccinations.

(3) The licensee shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The licensee shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The licensee shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The licensee shall ensure that no child in care handles reptiles or amphibians while in care.

R430-90-23. Diapering.

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a disposable plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.

(7) A provider shall daily clean and sanitize indoor containers where soiled diapers are placed.

(8) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) after a diaper change, the provider shall place the cloth diaper directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or a leakproof diapering service container.

(9) The licensee shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-90-24. Infant and Toddler Care.

If the licensee accepts infants or toddlers for care, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.

(11) The licensee shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

KEY: child care facilities, licensed family child care
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Notice of Continuation June 6, 2008

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-100. Child Care Centers.
R430-100-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of child care centers and requirements to protect the health and safety of children in child care centers.

R430-100-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(13) "Infant" means a child aged birth through 11 months of age.

(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin and mineral supplements.

(17) "Parent" means the parent or legal guardian of a child in care.

(18) "Person" means an individual or a business entity.

(19) "Physical Abuse" means causing nonaccidental physical harm to a child.

(20) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(21) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(22) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidently or deliberately passing through the barrier.

(23) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(24) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(25) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(26) "School Age" means kindergarten and older age children.

(27) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(28) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(29) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

(30) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(31) "Toddler" means a child aged 12 months but less than 24 months.

(32) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(33) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R430-100-3. License Required.

A person or persons must be licensed as a child care center under this rule if:

(1) they provide care in the absence of the child's parent;

(2) they provide care in a place other than the provider's home or the child's home;

(3) they provide care for five or more children, for four or more hours per day;

(4) they provide care for each individual child for less than 24 hours per day;

(5) the program is open to children on an ongoing basis for four or more weeks in a year; and

(6) they provide care for direct or indirect compensation.

R430-100-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint.

(2) For preschoolers and toddlers who are toilet trained, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.

(3) School age children shall have privacy when using the bathroom.

(4) For buildings constructed after 1 July 1997 there shall

be a working hand washing sink in each classroom.

(5) Each area where infants or toddlers are cared for shall meet one of the following criteria:

(a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.

(b) There shall be one working sink in the room which is used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(6) Infant and toddler areas shall not be used as access to other areas or rooms.

(7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows and glass doors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children;

(b) for the care of children; or

(c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R430-100-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R430-100-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R430-100-20(5).

(5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(7) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(8) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

(9) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(10) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of

the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required
for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required
for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	not allowed	not allowed

(g) If wood products are used as cushioning material:

(i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and

(ii) there shall be adequate drainage under the material.

(h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 3

Heights of Designated Play Surfaces
That May Be Placed on Grass

INFANTS and TODDLERS	PRESCHOOLERS	SCHOOL AGE
Less than 18"	Less than 20"	Less than 30"

(j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.

(k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.

(l) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(n) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(o) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R430-100-7. Personnel.

(1) The center must have a director who is at least 21 years of age and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12

semester credit hours of early childhood development courses;

(b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until 30 June 2011 to obtain the required additional training in early childhood development.

(2) All caregivers shall be at least 18 years of age.

(3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with any child in care.

(5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(6) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(7) Whenever there are more than 8 children at the center, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.

(8) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) job description and duties;

(b) the center's written policies and procedures;

(c) the center's emergency and disaster plan;

(d) the current child care licensing rules found in Sections R430-100-11 through 24;

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(9) The following individuals shall complete a minimum of 20 hours of child care training each year, based on the center's license date:

(a) the director;

(b) the assistant director, if the center has one;

(c) all caregivers;

(d) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(e) all volunteers that the provider includes in the provider to child ratio.

(10) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(11) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicense date.

(12) Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R430-100-11 through 24;

(b) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

(13) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

(14) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R430-100-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) The center director shall be on-site at the center for at least 20 hours per week during operating hours in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.

(8) The center director must have sufficient freedom from other responsibilities to manage the center and respond to

emergencies.

(9) There shall be a working telephone at the facility, and the center director shall inform a parent and the Department of any changes to the center's telephone number within 48 hours of the change.

(10) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.

(11) The duties and responsibilities of the center director include the following:

(a) appoint one or more individuals who meet the background screening and training requirements of this rule to be a director designee, with authority to act on behalf of the center director in his or her absence;

(b) train and supervise staff to:

(i) ensure their compliance with this rule;

(ii) ensure they meet the needs of the children in care as specified in this rule; and

(iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) ensuring that food preparation and diapering handwashing are not done in the same sink in infant and toddler areas;

(i) discipline of children, including behavioral expectations of children and discipline methods used;

(j) transportation to and from off-site activities, or to and from home, if the center offers these services; and

(k) if the program offers transportation to or from school, policies addressing:

(i) how long children will be unattended before and after school;

(ii) what steps will be taken if children fail to meet the vehicle;

(iii) how and when parents will be notified of delays or problems with transportation to and from school; and

(iv) the use of size-appropriate safety restraints.

(13) The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

R430-100-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-10(11)(12)(13)(14);

(b) current animal vaccination records as required in R430-100-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and

(g) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R430-100-14(5);

(c) for each infant, toddler, and preschooler, current immunization records or documentation of a legally valid exemption, as specified in R430-100-14(4);

(d) a transportation permission form, if the center provides transportation services;

(e) a six week record of medication permission forms, and a six week record of medications actually administered; and

(f) a six week record of incident, accident, and injury reports; and

(g) a six week record of eating, sleeping, and diaper changes as required in R430-100-23(12) R430-100-24(15).

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form;

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R430-100-10(2), R430-100-20(5)(d), and R430-100-21(2).

R430-100-10. Emergency Preparedness.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the center is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The center shall vary the days and times on which fire and other disaster drills are held.

R430-100-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children or more than 2 infants present.

(4) The licensee shall maintain the minimum caregiver to child ratios and group sizes in Table 5 for single age groups of children.

TABLE 4

Minimum Caregiver to Child Ratios and Group Sizes

Ages of Children	# of Caregivers	# of Children	Maximum Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
5 years old and school age	1	20	40

(5) A center constructed prior to 1 January 2004 which has been licensed and operated as a child care center continuously since 1 January 2004 is exempt from maximum group size requirements, if the required caregiver to child ratios are maintained, and the required square footage for each classroom is maintained.

(6) Mixed age groups shall meet the ratios and group sizes specified in Tables 5-15.

TABLE 5

Two-year-olds and Three-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	Total children: up to 10	
2	2	1-13
	3	1-19
	Total children: up to 20	

TABLE 6

Two-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-10
	Total children: up to 11	
2	2	1-13
	4	1-21
	Total children: up to 22	

TABLE 7

Two-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	5-12	1-13
	Total children: up to 14	
2	2	1-13
	5-12	1-27
	Total children: up to 28	

TABLE 8

Three-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-13
	Total children: up to 14	
2	3	1-23
	4	1-27
	Total children: up to 28	

TABLE 9

Three-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	5-12	1-15
	Total children: up to 16	
2	3	1-23
	5-12	1-31
	Total children: up to 32	

TABLE 10

Four-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	4	1-14
	5-12	1-17
	Total children: up to 18	
2	4	1-29
	5-12	1-35
	Total children: up to 36	

TABLE 11

Two-year-olds, Three-year-olds, and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	4	1-9
	Total children: up to 11	
2	2	1-13
	3	1-20
	4	1-20
	Total children: up to 22	

TABLE 12

Two-year-olds, Three-year-olds, and Five-twelve Year Olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	5-12	1-11
	Total children: up to 13	
2	2	1-13
	3	1-24
	5-12	1-24
	Total children: up to 26	

TABLE 13

Two-year-olds, Four-year-olds, and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-12
	5-12	1-12
	Total: up to 14	
2	2	1-13
	4	1-26
	5-12	1-26
	Total children: up to 28	

TABLE 14

Three-year-olds, Four-year-olds, and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-14
	5-12	1-14
	Total: up to 16	
2	3	1-23
	4	1-30
	5-12	1-30
	Total children: up to 32	

TABLE 15

Two-year-olds, Three-year-olds, Four-year-olds, and Five-11-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	4	1-11
	5-12	1-11
	Total children: up to 14	
2	2	1-13
	3	1-25
	4	1-25
	5-12	1-25
	Total children: up to 28	

(7) Infants and toddlers may be included in mixed age groups only when 8 or fewer children are present in the group.

(8) If more than 2 infants or toddlers are included in a mixed age group, there shall be at least 2 caregivers with the group.

(9) During nap time the caregiver to child ratio may double for not more than two hours for children age 18 months and older, if the children are in a restful or non-active state, and if a means of communication is maintained with another caregiver who is on-site. The caregiver supervising the napping children must be able to contact the other on-site caregiver without having to leave children unattended in the napping area.

(10) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center, but are counted in the maximum group size.

R430-100-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, wires and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(11) There shall be no trampolines on the premises that are accessible to any child in care.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(13) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R430-100-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the center with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs himself or herself out of the center, a copy of the report shall be mailed to the parent on the day following the occurrence.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R430-100-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any infant, toddler, or preschooler to the center without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The provider shall not admit any child to the center without a signed health assessment completed by the parent which shall include:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the caregiver.

(6) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R430-100-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods

served at each meal or snack.

(d) The provider shall post the current week's menu for parent review.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall ensure that caregivers who serve food to children are aware of food allergies and sensitivities for the children in their assigned group, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R430-100-16. Infection Control.

(1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding children;

(c) before and after diapering a child;

(d) after using the toilet or helping a child use the toilet;

(e) before administering medication;

(f) after coming into contact with body fluids, including breast milk;

(g) after playing with or handling animals;

(h) when coming in from outdoors; and

(i) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with body fluids;

(d) after playing with animals; and

(e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures that are readily visible from each handwashing sink, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work or volunteer in the center.

(12) Children's clothing shall be changed promptly if they have a toileting accident.

(13) Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the center; and

(b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.

(15) Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.

(16) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(17) The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.

(18) The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.

(19) The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(20) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(21) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R430-100-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in this rule.

(2) All over-the-counter medications provided by parents and all prescription medications shall:

(a) be labeled with the child's full name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

(a) the name of the child;

(b) the name of the medication;

(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent

must be either:

(a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

(a) wash their hands;

(b) check the medication label to confirm the child's name;

(c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) administer the medication; and

(e) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-100-18. Napping.

(1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.

(2) Scheduled nap times shall not exceed two hours daily.

(3) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.

(4) Mats and mattresses used for napping shall have a smooth, waterproof surface.

(5) The provider shall maintain sleeping equipment in good repair.

(6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.

(7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.

(8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.

(9) A sheet and blanket or acceptable alternative shall be used by each child during nap time. These items shall be:

(a) clearly assigned to one child;

(b) stored separately from other children's when not in use; and,

(c) laundered as needed, but at least once a week, and prior to use by another child.

(10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.

(11) Cots and mats may not block exits.

R430-100-19. Child Discipline.

(1) The provider shall inform caregivers, parents, and children of the center's behavioral expectations for children.

(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.

(4) Discipline measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-100-20. Activities.

(1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.

(2) Daily activities shall include outdoor play if weather permits.

(3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.

(4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.

(5) If off-site activities are offered:

(a) the provider shall obtain written parental consent for each activity in advance;

(b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:

(i) the child's name;

(ii) the parent's name and phone number;

(iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;

(iv) the names of people authorized by the parents to pick up the child; and

(v) current emergency medical treatment and emergency medical transportation releases;

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

(e) caregivers shall take a first aid kit with them;

(f) children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and

(g) caregivers shall provide a way for children to wash their hands as specified in R430-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.

(6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R430-100-21. Transportation.

(1) Any vehicle used for transporting children shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) have a current vehicle registration and safety inspection;

(d) be maintained in a safe and clean condition;

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
(f) contain a first aid kit; and
(g) contain a body fluid clean up kit.
(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.
(3) The adult transporting children shall:
(a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
(b) have with them written emergency contact information for all of the children being transported;
(c) ensure that each child being transported is wearing an appropriate individual safety restraint;
(d) ensure that no child is left unattended by an adult in the vehicle;
(e) ensure that all children remain seated while the vehicle is in motion;
(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,
(g) ensure that the vehicle is locked during transport.

R430-100-22. Animals.
(1) The provider shall inform parents of the types of animals permitted at the facility.
(2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
(3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.
(4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.
(5) Infants, toddlers, and preschoolers shall not assist with the cleaning of animals or animal cages, pens, or equipment.
(6) If a school age child assists in the cleaning of animals or animal equipment, the child shall wash his or her hands immediately after cleaning the animal or equipment.
(7) There shall be no animals or animal equipment in food preparation or eating areas.
(8) Children shall not handle reptiles or amphibians.

R430-100-23. Diapering.
If the center diapers children, the following applies:
(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.
(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.
(3) Caregivers shall not leave children unattended on the diapering surface.
(4) The diapering surface shall be smooth, waterproof, and in good repair.
(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.
(6) Caregivers shall clean and sanitize the diapering surface after each diaper change.
(7) Caregivers shall wash their hands before and after each diaper change.
(8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.
(9) The provider shall daily clean and sanitize containers where wet and soiled diapers are placed.
(10) If cloth diapers are used:
(a) they shall not be rinsed at the center; and
(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.
(11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.
(12) Caregivers shall keep a written record daily for each infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the child's name, the time of the diaper change, and whether the diaper was dry, wet, soiled, or both.
(13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

R430-100-24. Infant and Toddler Care.
If the center cares for infants or toddlers, the following applies:
(1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present in the group.
(2) Infants and toddlers shall not use outdoor play areas at the same time as older children unless there are 8 or fewer children present in the group.
(3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.
(4) The provider shall clean and sanitize high chair trays prior to each use.
(5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.
(6) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:
(a) labeled with the child's name;
(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;
(c) kept refrigerated if needed; and
(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.
(7) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.
(8) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.
(9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.
(10) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.
(11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.
(12) Cribs must:
(a) have tight fitting mattresses;
(b) have slats spaced no more than 2-3/8 inches apart;
(c) have at least 20 inches from the top of the mattress to the top of the crib rail; and
(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.
(13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.
(14) Each infant and toddler shall follow their own pattern of sleeping and eating.

(15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the child's name, the food and beverages eaten, and the times the child slept.

(16) Walkers with wheels are prohibited.

(17) Infants and toddlers shall not have access to objects made of styrofoam.

(18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(20) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(21) Mobile infants and toddlers shall have freedom of movement in a safe area.

(22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.

(23) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child plays with it; and

(c) after being contaminated by body fluids.

R430-100-25. Penalty.

The Department may impose civil money penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter.

KEY: child care facilities, child care, child care centers
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Notice of Continuation August 3, 2012

R432. Health, Family Health and Preparedness, Licensing.
R432-35. Background Screening -- Health Facilities.
R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(12) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(15) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(16) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

R432-35-4. Covered Provider - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to issuance of a provisional license, license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access

Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(8) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered provider, are required to submit fingerprints within 15 working days of their 18th birthday.

(9) Covered providers requesting to renew a license as a health care facility must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for each covered individual.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

R432-35-5. Covered Contractor - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered contractor, are required to submit fingerprints within 15 working days of their 18th birthday.

R432-35-6. Covered Employer - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

R432-35-7. Sources for Background Review.

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

R432-35-8. Exclusion from Direct Patient Access.

(1) Criminal Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Criminal Code.

(ii) any felony or class A, B or C conviction under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(iii) any felony or class A conviction under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(iv) any felony or class A conviction under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(v) any felony or class A conviction under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(vi) any felony or class A conviction under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code;

(vii) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-9-301.8, Bestiality;

(B) 76-9-702, Lewdness - Sexual Battery - Public urination; and

(C) 76-9-702.5, Lewdness Involving Child.

(viii) any felony or class A conviction under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(ix) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(B) 76-10-1301 to 1314, Prostitution;

(x) any felony or class A conviction under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(c) The following factors may be considered in determining under what circumstance, if any, the covered individual will be allowed direct patient access in a covered provider:

(i) types and number of offenses;

(ii) passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(iii) circumstances surrounding the commission of the offense; and

(iv) intervening circumstances since the commission of the offense. The Executive Director may exclude, on a case-by-case basis, misdemeanors listed under paragraph (a) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult.

(d) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and may deny clearance based on that evidence.

(2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28.

(ii) over the age of 28, and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities, background screening
December 12, 2012 26-21-9.5
Notice of Continuation May 27, 2008

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-6. Delayed Registration of Birth or Death.
R436-6-1. Court Ordered Delayed Registration of Birth.

When there is evidence that a live birth has occurred, but no birth certificate is on file or a certified copy of the birth certificate cannot be obtained, interested persons may petition for a court order establishing the date, time and place of birth. The petition shall be filed with the clerk of the district court in the county:

(a) Where the birth is alleged to have occurred; or

(b) Where the person whose birth it is sought to establish usually resides.

Persons who were not born in Utah and are not residents of Utah shall not qualify for birth certificate registration under this rule.

Residents of Utah, born outside of Utah and petitioning to register their birth under this rule, shall provide the court evidence that no birth certificate is on file at the place where they were born or that they are unable to obtain a certified copy of their birth certificate from the place where they were born.

Foreign born children who are becoming residents of Utah through adoption proceedings, and who have no original birth certificate on file or are unable to obtain a certified copy of their birth certificate, may have a court order delayed birth certificate registered in Utah. A court order establishing the date, time, and place of birth, should be obtained prior to the court order of adoption. However, the court order of adoption may include the findings of fact regarding the date and place of birth to meet this requirement.

Delayed registrations of birth filed under this rule shall show the actual place of birth, to the extent known, on the birth certificate filed with the State Registrar. This delayed registration shall carry no presumption of United States citizenship.

R436-6-2. Court Ordered Delayed Registration of Death.

When there is evidence that a death has occurred, but no death certificate is on file or a certified copy of the death certificate cannot be obtained, interested persons may petition for a court order establishing the fact, time, and place of death. The petition shall be filed with the clerk of the district court in the county:

(a) Where the death is alleged to have occurred; or

(b) Where the deceased usually resided at the date of the alleged death.

A death alleged to have occurred outside of Utah to a non-resident of Utah shall not qualify for death certificate registration under this rule.

KEY: vital statistics, court records, birth
1989 26-2-15
Notice of Continuation December 3, 2012

R495. Human Services, Administration.
R495-890. Department of Human Services Conflict Investigation Procedure.
R495-890-1. Authority.

(1) This rule is authorized by Sections 62A-1-110, 62A-1-111, 62A-4a-202.6(4).

R495-890-2. Definitions.

(1) The definitions contained in Sections 62A-4a-101, 62A-4a-402 and 62A-4a-1002 apply to this rule and to the child abuse, neglect, or dependency DHS conflict investigations. The definitions contained in Section 62A-3-301 apply to this rule and to the vulnerable adult abuse, neglect, or exploitation DHS conflict investigations. In addition, the following terms are defined for the purposes of this Rule:

(a) "Accepted referral" means a referral that has been screened by APS or DCFS intake and has met the agency's requirements for accepting a referral.

(b) "APS" means Adult Protective Services.

(c) "Case" means a referral that has been accepted for an investigation.

(d) "Child" means a person under eighteen years of age.

(e) "Client" means any person receiving services from DHS.

(f) "Conflict" means that there is an accepted referral alleging child abuse neglect and dependency OR abuse, neglect or exploitation of a vulnerable adult, and DHS has a relationship with either the victim, alleged perpetrator, or another person named in the investigation such that there might be a perceived or actual conflict of interest or a perceived or actual appearance of impropriety if the referral is investigated by DCFS or APS. Potential conflicts of interest include:

(i) There is an accepted referral alleging child abuse, neglect or dependency and an employee, volunteer, board member, provider, or contractor of DHS either is the alleged perpetrator or has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation.

(ii) There is an accepted referral alleging abuse, neglect or exploitation of a vulnerable adult, and an employee, volunteer, board member, provider, or contractor of DHS either is the alleged perpetrator or has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation.

(iii) There is an accepted referral and a person's relationship with DHS may influence an investigation of abuse, neglect or dependency of a child, or abuse, neglect or exploitation of a vulnerable adult.

(iv) An accepted referral alleges child abuse, neglect, or dependency by a professional partner of DCFS, including but not limited to: an Assistant Attorney General, a Guardian ad Litem, or a law enforcement officer who works directly with DCFS.

(v) An accepted referral alleges that a child in the custody of DCFS has been abused or neglected, and there is a lapse in the contract for an independent CPS investigation from the private sector.

(vi) An accepted referral alleges that a child has been abused and/or neglected while in the custody or guardianship of DJJS, while placed in the USH or USDC, or while placed with a contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer or board member with DHS, or a provider or contractor of DCFS.

(vii) An accepted referral alleges that an adult has been abused, neglected or exploited while in the guardianship of OPG, placed at the USH or the USDC, or placed with a DHS contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer, or board member of DHS, or a provider, or contractor of DAAS.

(viii) Any other conflict exists that may prevent the assigned agency from making an objective determination based on the facts of the case.

(ix) The Executive Director of DHS designates a case a "DHS Conflict Investigation" and directs that the case be assigned to a DHS Conflict Investigator.

(g) "DHS Conflict Case" means that a conflict has been identified, and the case has been referred to a DHS Conflict Investigator for a DHS Conflict Investigation.

(h) "DHS Conflict Investigation" means the investigation of a CPS case by a DHS Conflict Investigator or the screening of an APS case to determine whether a conflict exists.

(i) "DHS Conflict Investigator" means an employee of DHS assigned to OSR to conduct DHS Conflict Investigations.

(j) "CPS" means Child Protective Services.

(k) "DHS" means the Department of Human Services, and includes all of the agencies and offices within the Department.

(l) "DCFS" means the Division of Child and Family Services, including its regional offices.

(m) "DAAS" means the Utah Division of Aging and Adult Services.

(n) "DJJS" means the Division of Juvenile Justice Services.

(o) "DJJS Investigator" means an employee of DJJS who conducts internal affairs investigations for DJJS.

(p) "DSPD" means the Division of Services for People with Disabilities.

(q) "Executive Director" is as defined in 62A-1-104 and includes the designee of the Executive Director.

(r) "OPG" means the Office of the Public Guardian.

(s) "OSR" means the Office of Services Review within the Utah Department of Human Services.

(t) "Reasonable Restraint" means: Justifiable restraint to protect the client or to protect others from the client's acts. Supported physical abuse does not include the use of reasonable and necessary physical restraint by an educator in accordance with Section 53A-11-802(2) or 76-2-401. Nor does it include conduct that constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the client's possession or control, or to protect the client or another person from physical injury.

(i) In determining whether "reasonable restraint" was used in a DHS facility, the DHS Conflict Investigator shall take into account the nature and purpose of the facility.

(u) "Referral" means information provided to DCFS intake alleging abuse, neglect, or dependency of a child, or to APS intake alleging abuse, neglect or exploitation of a vulnerable adult.

(v) "Secondary worker" means a DCFS employee or an APS employee assigned to a DHS Conflict Investigation to conduct limited casework activities requested by the DHS Conflict Investigator, including but not limited to the following: making priority face to face contact when the DHS Conflict Investigator is unable to do so; assisting with the removal of a child; booking the child into a shelter facility; and filing a petition for ongoing In-Home or Out-of-Home services.

(w) "USDC" means the Utah State Developmental Center.

(x) "USH" means the Utah State Hospital.

(y) "Vulnerable Adult" is the same as defined in 62A-3-301(28).

R495-890-3. Purpose.

(1) The purpose of this rule is to establish the criteria used to determine:

(a) when a conflict investigation is necessary; and

(b) how conflict investigations will be conducted;

(2) It is the Department of Human Services' goal to avoid any impropriety or appearances of impropriety that may arise

when a conflict exists and to ensure that investigations involving an employee, volunteer, board member, provider, or contractor of DHS are conducted fairly. DHS conflict investigations shall be conducted in a manner consistent with CPS and APS procedures and policies.

R495-890-4. Procedure Used When a DHS Conflict Investigation Is Necessary for Children.

(1) In general, OSR shall be notified whenever a conflict, as defined above, exists.

(2) When a CPS intake worker identifies a potential conflict, the intake worker shall staff the referral with OSR to determine if a conflict exists. OSR shall determine whether there is a conflict, and will notify the CPS Intake Worker of its decision.

(a) If OSR determines that no conflict exists, the case shall be referred back to CPS intake for investigation by DCFS no later than the next business day after OSR's determination.

(b) If a conflict is identified after the initial referral, OSR shall be notified on the next business day after the conflict is identified. If the DCFS or APS worker is responding to an emergency or priority one call, the worker shall complete whatever protective actions are necessary and then staff the conflict with a supervisor. The assigned CPS worker and/or the CPS worker's supervisor shall notify OSR no later than the next business day after the conflict is identified.

(c) Once the accepted case is assigned to OSR, a conflict investigator shall be assigned and all investigation activities from that point forward shall be supervised by OSR.

(3) If the conflict case involves a child in the custody of DCFS it shall be assigned to an independent CPS investigator from the private sector. If there is a lapse in the contract for an independent CPS investigator from the private sector, the case will be assigned to a DHS Conflict Investigator.

(4) DHS Conflict Investigator shall have training that is substantially similar to the training received by CPS workers.

(5) DHS Conflict Investigators have the same rights, duties, and authority to investigate referrals as CPS workers.

(6) The following duties are to remain the duties of CPS Intake: receipt of the referral; research; disposition of the referral; establish priority of the referral; and, establish allegation categories.

(7) A DCFS investigator may act as a secondary worker and assist the DHS Conflict Investigator.

(8) The DHS Conflict Investigator shall determine whether the allegations are supported, unsupported, or without merit,.

(9) If the Executive Director has designated a case as a conflict case, OSR shall assign the case to a (DHS) Conflict Investigator.

R495-890-5. Procedure Used When a DHS Conflict Investigation Is Necessary for Adults.

(1) Allegations of abuse, neglect, or exploitation of a vulnerable adult shall be referred to APS Intake.

(a) If APS Intake accepts the referral and identifies a potential conflict, the Intake worker shall staff the referral with OSR to determine if a conflict exists.

(b) OSR shall determine whether there is a conflict and will notify APS intake of its decision.

(c) In cases where a conflict exists, OSR shall accept the case, and consult with the APS Director or designee in determining the appropriate APS investigator that APS intake will assign to the case.

(d) If OSR determines that no conflict exists, the case shall be referred back to APS intake for investigation by APS no later than the next business day after OSR's determination.

(2) If any concerns arise during the investigation around conflict issues, APS may consult with OSR as how to handle the conflict.

(3) If a conflict is identified after APS has initiated an investigation, OSR shall be notified on the next business day after the conflict is identified. If the APS worker is responding to an emergency, the worker shall complete whatever protective actions are necessary and then staff the conflict with a supervisor. The supervisor shall notify OSR of the conflict and OSR shall consult with the APS Director or designee in determining the appropriate APS investigator that APS intake will assign to the case.

(4) If the Executive Director has designated a case as a conflict case, OSR shall consult with the APS Director or designee in determining the appropriate APS investigator that APS intake will assign to the case.

R495-890-6. Special Procedures for DHS Conflict Investigations.

(1) Nothing in this rule is intended to limit an agency's ability to conduct its own internal investigation of any incident that occurs in a facility or by an employee during working hours.

(2) The DHS conflict investigation is meant to determine whether abuse, neglect or dependency of a child, or abuse, neglect or exploitation of an adult occurred. If, during the course of the investigation, the DHS Conflict Investigator or APS investigator believes that a separate investigation into policy or personnel matters is warranted, the DHS Conflict Investigator or APS investigator may notify the agency of its concerns.

(3) A DHS Conflict Investigator or APS investigator may determine that a person was not abused or neglected if reasonable restraint was used in a DJJS facility, the USH, the USDC, or other contracted facility or program of DJJS or DSPD.

(4) The DHS Conflict Investigator or APS investigator may notify the agency of the initiation of an investigation and/or the conclusion of an investigation.

KEY: investigations, conflict
December 10, 2012

62A-1-110
62A-1-111
62A-1-115
62A-4A-101
62A-4a-202.6
62A-4a-202.6(4)

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Purpose.

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Section 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

(2) A vulnerable adult with capacity to consent has the right to self-determination.

(3) All services provided are voluntary unless court ordered.

(4) All services provided should be the least restrictive possible.

(5) All services provided shall be community-based unless community-based services are unavailable.

(6) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(7) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(8) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) All definitions found in Title 62A Chapter 3 are incorporated by reference.

(2) Activities of Daily Living means the ability to: take a full body bath or shower, including transfer in and out of the bath or shower; tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care; put on, fasten and take off all clothing, and select appropriate attire; walk without supervision or cues, including using a walker or cane; use steps or ramps; use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner; transfer without supervision or devices in and out of a bed or chair; and the ability to feed oneself, prepare food, drinkor use necessary adaptive devices.

(2a) Instrumental Activities of Daily Living (ADL's) means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for one's necessities, and obtaining services.

(3) Conservator means an individual or agency appointed by a court in accordance with Section 75-5-401, et seq.

(4) Guardian means an individual or agency appointed by a court in accordance with Section 75-5-303, et seq.

(5) Incapacitated Person is as defined in Section 75-1-201(18).

(6) Intentionally is as defined in Section 76-2-103(1).

(7) Knowingly is as defined in Section 76-2-103(2).

(8) Lifestyle Choice means a knowing and voluntary choice to live a certain way, including a non-conventional way, by a person who has capacity to make that choice.

(9) Limited Capacity means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(10) Long-term care facility is as defined in Section 62A-3-202.

(11) Protective intervention funding means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(12) Protective Needs means factors identified by the APS Protective Needs Assessment that pose significant risk for, or are the result of Abuse, Neglect or Exploitation of a vulnerable adult.

(13) Protective Needs Assessment means an assessment of a vulnerable adult's impairments and alleged risk factors for Abuse, Neglect or Exploitation that are found to be present in that APS case investigation.

(14) Protective Supervision means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(15) Recklessly is as defined in Section 76-2-103(3).

(16) Respite Care means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

(17) Service Plan means a document created by the APS caseworker for an approved Short-term Service Case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an Adult Protective Services investigation, and which implements recommendations of the case review committee.

(18) Short-term protective services include but are not limited to crisis intervention, emergency shelter, protective supervision, respite care, supported living services, or short-term intervention funding.

(19) Short-Term intervention funding means short-term payments made to the vulnerable adult, family, or caregiver or other provider, during a short-term service case for goods or services other than for Respite Care or Supported Living, that will alleviate or resolve a protective need.

(20) Supported Living means short-term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-6. Adult Protective Services Intake.

(1) Referrals may be submitted to the APS Intake Office in any format from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited in the State of Utah.

(2) All referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall accept all referrals with allegations of abuse, neglect, or exploitation of a vulnerable adult in the State of Utah except as follows:

(a) when the referral does not involve an allegation that a vulnerable adult may have been or is being abused, neglected or exploited.

(b) when the referral does not identify a current abuse, neglect or exploitation but anticipates that abuse, neglect or exploitation may occur.

(c) when the referral involves a vulnerable adult on an Indian reservation, a written agreement between APS and tribal authorities granting APS authority to investigate must be in effect or the referral shall be forwarded by Intake to federal or tribal authorities.

(4) APS shall notify the Department of Health and the Local Long-term Care Ombudsman when a referral involves a long-term care facility.

(5) APS may submit a referral that involves a Division employee or other potential conflict of interest to the DHS Office of Services Review for review.

R510-302-7. Investigation.

(1) The assigned investigator shall initiate the investigation and determine whether:

(a) there is an allegation of abuse, neglect or exploitation;

(b) the alleged victim is a vulnerable adult;

(c) the alleged victim has the capacity to consent;
(d) the alleged victim has a legal guardian or conservator;
(e) an emergency exists; and
(f) the extent of the alleged victim's mental or physical impairment.
(2) The investigator shall make a face-to-face visit with the alleged victim.
(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.
(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.
(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, legal guardian, or caretaker consents, except when the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm.
(4) The investigator shall interview the alleged perpetrator unless:
(a) specifically requested not to do so by law enforcement officers in order to avoid impeding an ongoing criminal investigation or proceeding;
(b) interviewing the alleged perpetrator would likely endanger any person;
(c) prior to interviewing the alleged perpetrator, the allegation is found to be without merit;
(d) APS is unable to locate the victim;
(e) the alleged victim died before the investigation started;
(f) the alleged perpetrator is unknown; or
(g) the alleged perpetrator has refused the interview.
(5) When the investigator has reason to believe any hazardous waste or illegal drugs may be located at an investigative site, the investigator will contact law enforcement agencies and not enter the site until the local health department determines it is safe to do so. The law enforcement agencies may be asked:
(a) to assess and secure a vulnerable adult's immediate safety,
(b) facilitate the vulnerable adult's exit from the lab site,
(c) and arrange for emergency transportation to the hospital for decontamination.
(6) The investigator may obtain an administrative subpoena when the following circumstances apply:
(a) the vulnerable adult lacks the capacity to consent; or
(b) the vulnerable adult's legal guardian refuses to consent; or
(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; or
(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.
(7) An administrative subpoena form:
(a) shall include a list that specifically identifies the documents or objects being subpoenaed;
(b) is not valid until signed by the Director or Regional Director.
(8) The investigator shall document all items received as a result of the subpoena.
(9) the investigator shall evaluate all information obtained during the investigation and determine:
(a) whether each allegation of abuse, neglect and exploitation identified during the investigation is supported, inconclusive, or without merit; and
(c) law enforcement shall be contacted to coordinate or assist on an investigation, if the investigation indicates that criminal abuse, neglect or exploitation may have occurred or the safety of the any person is endangered.
(d) if an unmet (protective) need exists:
(i) the investigator may refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need;
(ii) the investigator or Supervisor may request a review by the Case Review Committee to determine if Short-Term Services may help to resolve the protective need;
(iii) the investigator may make a referral to the Office od Public Guardian;
(iv) the investigator may provide crisis intervention to assist the vulnerable adult in obtaining services or benefits as it relates to the abuse, neglect or exploitation;
(v) the investigator may contact the family of a vulnerable adult who lacks capacity and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs;
(vi) the investigator may provide Protective Intervention Funds at the sole discretion of APS. These funds may be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult;
(vii) the investigator may provide one-time payments for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage; transportation; minor repairs or modifications; rent; food; or clothing, or other needs that directly benefit the vulnerable adult to alleviate or resolve a protective need; or
(viii) the investigator may provide payments for a service provider or individual for approved Short-term services for Respite care, Supported living, or for short-term intervention funds.

R510-302-8 Settlement Agreements.
(1) The Division may enter into a settlement agreement with the person who has received a notification of agency action letter pursuant to 62A-3-311.5.
(2) No settlement agreement shall be enter into once the Supported finding has been upheld by a court of competent jurisdiction.

R510-302-9. Eligibility.
(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.
(2) There are no eligibility requirements in order to receive short-term protective supervision services.
(3) There are no eligibility requirements in order to receive Protective Intervention Funds to resolve a situational crisis or an immediate protective need.
(4) A vulnerable adult shall meet income eligibility requirements in order to receive short-term protective services other than protective supervision services, including respite care, supported living, short-term intervention funding, and other services approved by the APS Director or regional director.
(a) For purposes of eligibility for short-term protective services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.
(b) A person living under the care of someone other than their spouse is considered a one-person family.
(c) In determining whether a vulnerable adult meets income eligibility requirements for short-term protective services, family assets shall be disclosed and evaluated.
(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, which can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses; net income from self-employment; Social Security Pensions, SSI, Survivor's Benefits, and Permanent Disability Insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers; pensions, annuities; unemployment compensation; strike benefits; worker's compensation; alimony, child support, money received as specified in a divorce or support decree; Veterans' pensions or subsistence allowances; and other regular (three out of six months) financial assistance.

(iv) Monthly gross income does not include per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims; net proceeds received from the sale of a primary residence or an automobile; money borrowed; insurance payments in excess of incurred costs that must be paid from the settlement; the value of the coupon allotment under the Food Stamp Act; the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act; any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; earnings of a child (under 18 years of age) residing in the home; payments for energy assistance and weatherization HEAT program; housing subsidies paid by the Federal government; payments or grants received due to natural disaster; educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education (BEOG; SEOG; NDSL; Guaranteed Student Loans; SSIG; and PELL Grants); payments to participate in a service learning program, such as College Work-Study or University Year for Action; and that portion of any other loan, grant, or scholarship which is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(v) The expenses that shall be deducted in determining adjusted gross income are limited to medical expenses (including Medicaid spend-down and insurance); storage expenses; child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree; the dollar amount of first mortgage/rental payment over 25% of monthly countable income (not counted for Foster Care); and fees paid for other programs and protective services.

(vi) The sum of all family assets shall be divided by the number of family members, and if that amount exceeds $4,000 per family member, then the value over $4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.

(vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for service eligibility purposes.

(ix) All family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-10. Protective Need Intervention.

(1) An Investigator may request Protective Intervention Funding for an emergency shelter placement to alleviate the vulnerable adult's protective need. Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:

(a) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;

(b) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;

(c) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and

(d) the emergency shelter has all required current licenses and certifications.

R510-302-11. Short-Term Intervention.

(1) Short-term protective services may only be provided to a vulnerable adult who is the victim of abuse, neglect or exploitation, and in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to a court order. An updated service plan shall be signed at each case review.

(2) A short-term services Case Review Committee shall monitor and review short-term services. The Case Review Committee:

(a) shall consist of the primary worker, supervisor or designee, and two other region workers. The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.

(b) shall oversee the progress made towards resolution of the protective need.

(c) may recommend that short-term services are initiated, extended, or terminated.

(d) may recommend community referrals or alternative actions.

(3) The Case Supervisor may approve or deny Short-Term Services recommended by the Case Review Committee.

(4) Short-Term Services may only be provided under the following conditions:

(a) Short-term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short-term service case shall include a protective supervision service.

(c) Protective Intervention funds for Short-term services shall not be disbursed without the approval of the APS supervisor or regional director.

(d) Respite Care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite Care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short-term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.

(g) Payments for Short-Term Services may not be made until a case has been approved by the Case Review Committee and Services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-12. Protective Payee Services.

(1) Adult Protective Services shall not provide payee services.

R510-302-13. Termination of Short-Term Protective Services.

(1) A vulnerable adult has no entitlement or right to short-

term protective services from APS.

(2) Protective Services may be terminated by the vulnerable adult or APS at any time.

(3) Protective Services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving protective services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of State; or

(k) the vulnerable adult dies. APS shall complete a Deceased Client Report form in accordance with DHS policy 05-02.

(4) When APS terminates Short-Term protective services, a letter shall be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

(a) The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

KEY: vulnerable adults, adult protective services investigation, shelter care facilities, short-term services
December 21, 2012 62A-3-301 et seq.
Notice of Continuation July 11, 2012

R512. Human Services, Child and Family Services.
R512-52. Drug Testing Copayment for Parents of Children in Child and Family Services Custody.
R512-52-1. Purpose.

(1) As intended by the Utah State Legislature during the 2012 Legislative Session, Child and Family Services is required to collect some or all of the costs associated with drug testing from parents of children in state custody.

R512-52-2. Authority.

(1) This rule is authorized by Sections 62A-4a-102 and 62A-4a-109.

R512-52-3. Applicability of Copayment.

(1) The copayment applies:

(a) If a parent has a child in Child and Family Services custody in out-of-home placement.

(b) When a parent's drug testing is completed by a Child and Family Services' contracted drug testing provider.

(2) The copayment does not apply:

(a) When the parent is testing through a non-Child and Family Services contracted drug testing provider.

(b) To a parent with a child in Child and Family Services custody on a trial home placement with that parent.

(c) To a parent who does not have children in Child and Family Services custody, including:

(i) Parents involved with Child Protective Services investigations.

(ii) Parents involved with In-Home Services who have custody of their children.

(iii) Parents involved with In-Home Services whose children are in the custody of kin or another caregiver.

(d) Youth clients.

(e) To a parent who has been ordered to pay the full cost of drug testing pursuant to Section 62A-4a-105(2)(b).

R512-52-4. Amount and Collection of Copayment.

(1) The amount of the copayment is determined by Child and Family Services.

(2) The collection of the copayment is performed by the Child and Family Services contracted drug testing provider at the time of specimen collection.

(3) The copayment must be collected before the drug test can be performed. Failure by the parent to provide the copayment will result in a missed drug test.

KEY: child welfare
December 11, 2012 **62A-4a-102**
62A-4a-105
62A-4a-109

R523. Human Services, Substance Abuse and Mental Health.
R523-2. Adult Peer Support Specialist Training and Certification.
R523-2-1. Purpose, Authority and Intent.

(1) Purpose. These rules prescribe standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Adult Peer Support Specialist.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Section 62A-15-402.

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists.

R523-2-2. Definitions.

(1) "Adult Peer Support Specialist (PSS)" is an individual who has successfully completed an approved Adult Peer Support Specialist Training Program and for ongoing certification has met the requirements outlined in paragraph R523-2-9.

(2) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(3) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as an "Adult Peer Support Specialist Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

(8) "Recovery" is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

R523-2-3. Certification Requirements for Peer Support Specialist Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-2-5 for a PSS.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-2-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The PSS Training Program also agrees to allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the PSS Training Program. This process will:

(a) Develop and publish an application to be a PSS.

(b) Solicit input from stakeholders, Peer Support Specialists and other individuals on the review process.

(c) Establish further criteria for acceptance into the PSS program as needed.

R523-2-5. Curriculum requirements for Adult Peer Support Specialist Training Programs.

(1) This curriculum must provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the PSS's lived experience and recovery in order to assist in the identified client's recovery:

(a) Etiology of mental illness and substance use disorders;

(b) The stages of recovery from mental illness and substance use disorders;

(c) The relapse prevention process;

(d) Combating negative self-talk;

(e) The Role of Peer Support in the Recovery Process and Using Your Recovery Story as a Recovery Tool;

(f) Dynamics of Change;

(g) Strengthening the Peer Specialist's recovery;

(h) Ethics of Peer Support;

(i) Professional relationships, boundaries and limits;

(j) Scope of Peer Support;

(k) Cultural Competence: Self-Awareness - Cultural Identity;

(l) Stigma and Labeling;

(m) Community resources to support individuals in recovery;

(n) Assisting individuals in Accomplishing Recovery Goals;

(o) Coach, Mentor, and Role model recovery;

(p) Assist in identification of natural, formal and informal supports;

(q) Stress Management Techniques;

(r) Assisting individuals in reaching educational and vocational goals;

(s) Crisis prevention; and

(t) Assist with physical health and wellness.

(2) The curriculum must be strength based and include:

(a) Active listening and communication skills; and

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-2-7. Requirements to Become an Adult Peer Support Specialist.

(1) Be an individual who participated in substance abuse or mental health treatment services who is now in sustained recovery, or

(2) Be an individual in recovery from substance use or mental health disorders through means other than treatment services who is now in sustained recovery.

(3) Be at least 18 years of age.

(4) Complete the application process with the Division.

(5) Pass the qualification exam with score of 70% or

above.

(6) Have attended and successfully completed a Division approved Peer Support Specialist training program and have a valid certificate from that training.

R523-2-9. Requirements to remain qualified as an Adult Peer Support Specialist.

(1) Complete at least twenty (20) hours of continuing education per year including two (2) hours of ethics training and six (6) hours pertaining specifically to Peer Support services.

(2) Provide proof to the Division of completing the required training on an annual basis.

KEY: peer support specialist, PSS program, certification of programs, substance use disorder
December 27, 2012 62A-15-402

R523 Human Services, Substance Abuse and Mental Health.
R523-3. Child/Family Peer Support Specialist Training and Certification.
R523-3-1. Purpose, Authority and Intent.

(1) Purpose. These rules prescribe standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become a Child/Family Peer Support Specialist.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Section 62A-15-402.

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists.

R523-3-2. Definitions.

(1) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(3) Child/Family Peer Support Specialist is a "Family Resource Facilitator" (FRF) who is an individual who has successfully completed an approved Family Resource Facilitator Training Program and for ongoing certification has met the requirements outlined in paragraph R523-3-7.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as a "Family Resource Facilitator Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

R523-3-3. Certification Requirements for PSS Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-3-5 for Family Resource Facilitator Training.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-3-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The Family Resource Facilitator Training Program also agrees to allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the Family Resource Facilitator Training Program.

This process will:

(a) Develop and publish an application to be a Family Resource Facilitator Training Program.

(b) Solicit input from stakeholders, Family Resource Facilitators and other individuals on the review process.

(c) Establish further criteria for acceptance into the program as needed.

R523-3-5. Curriculum Requirements for Family Resource Facilitator Training Programs.

(1) This curriculum must provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the FRF's lived experience as a parent or caregiver of a youth with complex mental health and/or substance use needs in order to promote family and youth resiliency and assist in the identified client's recovery:

(a) Systems of Care

(i) Providing family driven, youth guided, culturally competent and community based services

(A) History of the family involvement movement

(ii) Wraparound and Wraparound process including:

(A) Strength, Needs and Cultural Discovery

(B) Assist in identification of natural, formal and informal supports

(C) Prioritize needs/goals and develop a plan of care

(D) Crisis Prevention

(E) Implement action steps and celebrate successes

(F) Transition Planning

(b) Family Resource Facilitator (FRF) model for strengthening families and building communities.

(i) FRF Roles

(A) Resource Coordination

(B) Family Education and Support

(C) Family Advocacy

(D) Wraparound to Fidelity

(ii) Training and supervision expectations

(c) Ethics of Peer Support

(d) Professional relationships, boundaries and limits

(e) Multi-agency coordination

(f) Family advocacy (individual and system change)

(g) Stigma and Labeling

(h) Assisting Individuals in Accomplishing Recovery Goals

(i) Coach, Mentor, and Role model recovery

(j) Stress Management Techniques

(k) Assist with reaching age appropriate educational and vocational goals; and

(l) Assist with physical health and wellness

(2) The curriculum must be strength based and include:

(a) Active listening and communication skills

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-3-6 Requirements to Become a Family Resource Facilitator.

(1) Be a parent of a child who has received services for a mental, emotional, behavioral or substance use disorder or an adult who has an on-going and personal relationship with a

family member who is a child who is receiving or has received services for a mental, emotional, behavioral or substance use disorder.

(2) Be at least 18 years of age.

(3) Have attended and successfully completed a Division approved Child, Youth and Family Peer Support Specialist training program and have a valid certificate from that training.

(4) Pass the qualification exam with a score of 80% or above.

R523-3-7 Requirements to Remain Qualified as a Family Resource Facilitator.

(1) FRF's are encouraged to advance toward additional levels of demonstrated competency and specialization achieved through continued training, mentoring and evaluation during an approved practicum.

(2) Complete at least twenty (20) hours of approved continuing education per year including two (2) hours of ethics training and six (6) hours pertaining specifically to Family Resource Facilitation.

(3) Provide proof to the Division of completing the required training on an annual basis.

KEY: peer support specialist, family resource facilitator, certification of programs, mental health and substance use disorder

December 27, 2012 62A-15-402

R590. Insurance, Administration.
R590-124. Loss Information Rule.
R590-124-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the general authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsection 31A-23a-402(8) authorizing the commissioner to define unfair methods of competition.

R590-124-2. Purpose and Scope.

(1) Accurate loss information is necessary in underwriting and rating insurance policies. The purpose of this rule is to provide for the prompt dissemination of loss information between insurers and their insureds.

(2) This rule applies to every authorized property and liability insurer licensed to do business in Utah writing those lines of insurance commonly identified as commercial property and commercial liability, including workers' compensation but excluding disability, and including every recognized Surplus Line Company and the Workers' Compensation Fund of Utah.

R590-124-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition thereto, the following definitions:

(1) "Named Insured" shall mean the person(s) or organization(s) listed in the policy declarations as the policyholder, or the legal representative thereof.

(2) "First Named Insured" shall mean the first entity named as a Named Insured in the declarations of the policy;

(3) "Loss" shall mean the dollar amount paid to an insured or claimant by an insurer on a claim made against an insurance contract;

(4) "Notice of Occurrence" shall mean notice to an insurer of an occurrence, which might result in a claim against an insurance contract.

R590-124-4. Rule.

(1) All insurers issuing policies to which this rule applies shall provide loss information to the first named insured within 30 days from the receipt of a written request from the named insured. Loss information shall be provided for the three most recent policy years in which coverage was provided, or complete loss information if the policy has been in effect less than three years. If an insurer initiates the cancellation or the nonrenewal of a policy it shall advise the first named insured of this right to request the loss information.

(2) The following is the loss information that must be provided:

(a) Information on closed claims where payment was allowed, including date of occurrence, type of loss, and amount of payments;

(b) Information on all open claims, including date of occurrence, type of loss, and amount of payments, if any;

(c) Information on notices of occurrence, including date of occurrence.

(3) The required loss information need only be provided one time in any twelve month period and shall be provided at no charge to the insured.

(4) Loss information requests received more than three years after the termination of coverage need not be honored.

(5) The loss information required by this rule shall be provided in a format that is clear and understandable to the insured.

R590-124-5. Penalties.

If a company fails to provide the information as required by this rule, such failure shall constitute an unfair trade practice as defined in Section 31A-26-303 and Rule R590-190 and shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-124-6. Separability.

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 provisions shall not be affected thereby.

R590-124-7. Effective Date.

This rule shall be effective July 14, 1988.

KEY: insurance companies
1988 31A-23a-402
Notice of Continuation December 12, 2012

R590. Insurance, Administration.
R590-155. Utah Life and Health Insurance Guaranty Association Summary Document.
R590-155-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3)(a), in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title; and

(2) Subsection 31A-28-119, to provide guidelines for the Utah Life and Health Insurance Guaranty Association summary and disclaimer document.

R590-155-2. Purpose and Scope.

1. The purpose of this rule is to specify the form and content of the summary and disclaimer document for insurers to disclose to policy or contract holders the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and Health Insurance Guaranty Association as required by Section 31A-28-119.

2. The rule shall apply to all insurance transactions in this state involving life and health insurance policies and annuity contracts as specified in Subsection 31A-28-103(2).

R590-155-3. Rule.

1. An insurer authorized to do business in this state, which is subject to the Utah Life and Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and Health Insurance Guaranty Association.

2. For the purpose of this rule, the term "policy or contract holders" shall also mean insureds or certificate holders of group policies.

3. Disclosure shall be made in writing using the text in the attachment to this Rule.

4. Disclosure shall be given before or at the time of delivery of the policy, contract, or certificate. The summary and disclaimer document shall also be available upon request by a policy or contract holder.

5. Each insurer shall submit a copy of the summary and disclaimer document to the commissioner for approval.

R590-155-4. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the effective date of this rule.

R590-155-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-155-6. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected.

KEY: insurance
June 21, 2010 31A-2-201
Notice of Continuation December 12, 2012 31A-28-119

R590. Insurance, Administration.
R590-162. Actuarial Opinion and Memorandum Rule.
R590-162-1. Purpose.

The purpose of this rule is to prescribe:

A. Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;

B. Guidance as to the meaning of "adequacy of reserves;" and

C. Rules applicable to the appointment of an appointed actuary.

R590-162-2. Authority.

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under Title 31A, Chapter 17, Part 5.

R590-162-3. Scope.

This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or disability insurance business in this State.

This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this rule, and a memorandum in support thereof in accordance with Section 7 of this rule, shall be required each year.

R590-162-4. Definitions.

A. "Actuarial Opinion" means the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 6 of this rule and with applicable Actuarial Standards of Practice.

B. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual Statement" means that statement required by Section 31A-4-113 to be filed by the company with the office of the commissioner annually.

D. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Subsection 5C of this rule to provide the actuarial opinion and supporting memorandum as required by 31A-17-503.

E. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Subsection 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

F. "Commissioner" means the Insurance Commissioner of this State.

G. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

H. "Qualified Actuary" means any individual who meets the requirements set forth in Subsection 5B of this rule.

R590-162-5. General Requirements.

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this rule.

(2) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(3) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under Subsection (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 5B of this rule. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give

the reasons for replacement.

D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this rule:

(1) shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule; and

(2) shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered

(1) Under authority of Section 31A-17-503, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Title 31A, Chapter 17, Part 5 the company shall establish such additional reserve.

(3) Additional reserves established under Subsection (2) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

R590-162-6. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.

A. General Description

(1) The statement of actuarial opinion submitted in accordance with this section shall consist of:

(a) a paragraph identifying the appointed actuary and his or her qualifications as specified in Subsection 6B(1) of this rule;

(b) a scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as specified in Subsection 6B(2) of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(c) a reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as specified in Subsection 6B(3) of this rule, supported by a statement of each such expert in the form prescribed by Subsection 6E of this rule; and

(d) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as specified in Subsection 6B(6) of this rule.

(2) One or more additional paragraphs will be needed in individual company cases as follows:

(a) if the appointed actuary considers it necessary to state a qualification of the opinion;

(b) if the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) if the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;

(d) if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(e) if the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(f) if the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20( ). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion), as certified in the attached statement I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Subsection 6E of this rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual

statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company or a third party, the reliance paragraph should include a statement such as:

"In forming my opinion on (specify types of reserves) I have relied upon data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

Such a statement of reliance must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 6E of this rule.

(6) The opinion paragraph should include the following:

TABLE

(a) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(i) are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(ii) are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(iii) meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(iv) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(v) include provision for all actuarial reserves and related statement items which ought to be established;"

(b) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company;"

(c) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion;" and

(d) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion;"

or

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" (Describe the change or changes.)

"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

.....
"Signature of Appointed Actuary

.....
Address of Appointed Actuary

.....
Telephone Number of Appointed Actuary

.....
Date"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Data Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to the reliance.

In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

F. Alternate Option

(1) As an alternative to the requirements of Subsection B(6)(a)(iii) of this rule, the appointed actuary may state that the reserves and related actuarial values "meet the requirements of the Insurance Law and rule of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been approved by the commissioner and that any conditions required by the commissioner for approval of that request have been met."

(2) To use this alternative, the company shall file a request to do so, along with the justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(3) Notwithstanding the above, the commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this State. If a company is unable to provide the opinion within sixty days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

R590-162-7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.

A. General

(1) In accordance with Section 31A-17-503, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other

actuaries who are qualified within the meaning of Subsection 5B of this rule, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three years.

(5)(a) In accordance with Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the content of which are specified in Subsection C.

(b) Every company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) Every foreign company is required to make the regulatory asset adequacy issues summary available to the commissioner upon request.

(d) The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. Details of the Memorandum Section Documenting Asset Adequacy Analysis.

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 5D of this rule and any additional standards under this rule. It shall specify:

(1) for reserves:

(a) product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(b) source of liability in force;

(c) reserve method and basis;

(d) investment reserves;

(e) reinsurance arrangements;

(f) identification of any explicit or implied guarantees made the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(g) documentation of assumptions to test reserves for the following:

(i) lapse rates (both base and excess);

(ii) interest crediting strategy;

(iii) mortality;

(iv) policyholder dividend strategy;

(v) competitor or market interest rate;

(vi) annuitization rates;

(vii) commissions and expenses; and

(viii) morbidity;

(2) for assets:

(a) portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(b) investment and disinvestment assumptions;

(c) source of asset data;

(d) asset valuation bases; and

(e) documentation of assumptions made for:

(i) default costs;

(ii) bond call function;

(iii) mortgage prepayment function;

(iv) determining market value for assets sold due to disinvestment strategy; and

(v) determining yield on assets acquired through the investment strategy;

(3) for the analysis basis:

(a) methodology;

(b) rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(d) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(e) effect of federal income taxes, reinsurance and other relevant factors;

(4) summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(5) summary of Results; and

(6) conclusions.

C. Details of the Regulatory Asset Adequacy Summary

(1) The regulatory asset adequacy issues summary shall include:

(a) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserve during one or more interim periods;

(e) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested; and

(f) whether the actuary has been satisfied that all options,

whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

D. Documentation

The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

R590-162-8. Exemptions.

A. Unless ordered by the commissioner, a company that is under supervision, rehabilitation, or liquidation is exempt from the requirements of this rule.

B.(1) At the discretion of the commissioner, a company domiciled in this State and doing business only in this State may submit an opinion without the statement required under R590-162-6(B)(6)(b).

(2) If the commissioner grants an exemption under Subsection B(1), the company shall be exempt from preparing and submitting the RAAIS document required under R590-162-7(A)(5).

C.(1) A company domiciled in this State, and otherwise subject to the requirements of this rule, may apply to the commissioner for an exemption from:

(a) the requirement to submit an actuarial opinion required under R590-162-5(A)(1);

(b) the requirement to include within its actuarial opinion the statement required under R590-162-6(B)(6)(b); or

(c) the requirement to prepare and submit the RAAIS document required under R590-162-7(A)(5).

(2) A company seeking an exemption under Subsection C(1) shall:

(a) submit a written request for an exemption no later than November 1 of the year for which the exemption is sought; and

(b) provide a written explanation and supporting documents, if any, explaining how complying with the requirement for which an exemption is sought would not enhance the department's understanding of the financial position of the company and, therefore, be an unnecessary burden on the company.

R590-162-9. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance
December 5, 2012 **31A-17-503**
Notice of Continuation October 30, 2008

R590. Insurance, Administration.
R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.
R590-215-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department.

R590-215-2. Purpose.

This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

(1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and

(2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

R590-215-3. Applicability and Scope.

(1) This rule applies to the following individual and group policies issued or renewed on or after July 1, 2002:

(a) income replacement policies; and

(b) health benefit plans.

(2) Long Term Care and Medicare supplement policies are not considered health benefit plans.

R590-215-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following:

(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(3) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration as set forth in such contract, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-215-5. Rule.

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when utilized as an internal review of an adverse benefit determination under 29 CFR Subsection 2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the election of an insured party, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR Subsection 2560.503-1(c)(3)(iii).

(4) Policy forms containing compulsory binding or voluntary binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Each application pertaining to an individual or group health benefit plan, and income replacement policy, which contains a voluntary arbitration provision, must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF, THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act," Title 78B, Chapter 11.

(8) Any such agreement for arbitration shall not obligate an insured to pay for the arbitration in accordance with 29 CFR 2560.503-1(c)(3)(v).

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-6. Severability.

If any provision of this rule or its application to any person or situation is held 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.

R590-215-7. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule when they take effect.

KEY: health insurance arbitration
May 20, 2003 31A-2-201
Notice of Continuation December 12, 2012 29 CFR 2560.503-1

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use

the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who

fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $125 per half hour for medical panel members and $137.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after January 1, 2013.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $17,468.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $25,200;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $30,927.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

KEY: workers' compensation, administrative procedures, hearings, settlements

December 24, 2012	**34A-1-301 et seq.**
Notice of Continuation June 19, 2012	**63G-4-102 et seq.**

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

D. "Usual and Customary Rate (UCR)" is the rate of payment to a dental provider using Ingenix, or a similar service, for charges for services for a particular zip code.

E. Unless otherwise specified, the term "insurer" includes workers' compensation insurance carriers and self-insured employers.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104 and Section 34A-2-407.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, nurse practicioners, physicians and chiropractors shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding. A physician, chiropractor, or nurse practitioner is to report every initial visit for which a bill is generated, including first aid, when a worker reports that an injury or illness is work related. All initial treatment, beyond first aid, that is provided by any health care provider other than a physician, chiropractor, or nurse practictioner must be countersigned by the supervising physician and reported on Form 123 to the Industrial Accidents Division and the insurance carrier or self-insured employer.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407(9):

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the Optum Essential RBRVS, 2012 1st Quarter Emergency Update, 1761/RBRCU/1766R/RBRC12/RBRC/U1766R ("RBRVS"), as the method for calculating reimbursement and the 2012 American Medical Association Current Procedural Terminology ("CPT").

a. The non-facility total unit value will apply in calculating

the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

b. The CPT and RBRVS, are subject to the Utah Labor Commission's Medical Fee Guidelines and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective December 1, 2012: (Conversion Rates below EFFECTIVE December 1, 2012, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology $41.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M $46.00;

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 $46.00;

Pathology and Laboratory $52.00;

Radiology $53.00;

Restorative Services $46.00;

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's 2013 Medical Fee Guidelines, effective December 1, 2012. The Utah Medical Fee Guidelines can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) to establish a reasonable fee for the procedure.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Director of the Division of Industrial Accidents may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

G. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

A. This rule establishes procedures to obtain dental care for work-related dental injuries and sets fees for such dental care.

B. Initial Treatment.

1. If an employer maintains a medical staff or designates a company doctor, an injured worker seeking dental treatment for work-related injuries shall report to such medical staff or doctor and follow their instructions.

2. If an employer does not maintain a medical staff or designate a company doctor, or if such staff or doctor are not available, an injured worker may consult a dentist to obtain immediate care dental for injuries caused by a work-related accident. The insurer shall pay the dentist providing this initial treatment at 70% of UCR for the services rendered.

C. Subsequent care by initial treatment provider.

1. If additional treatment is necessary, the dentist who provided initial treatment may submit to the insurer a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the cost of the additional treatment. If the dentist proceeds with treatment without authorization, the dentist must accept 70% of UCR as payment in full and may not charge any additional sum to the injured worker.

2. The insurer shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended only with written approval of the Industrial Accidents Division. If the insurer does not respond to the dentist's request for authorization within 10 working days, the insurer shall pay the cost of treatment as contained in the request for authorization.

3. If the insurer approves the proposed treatment, the insurer shall send written authorization to the dentist and injured worker. This authorization shall include the anticipated payment amount.

4. On receipt of the insurer's written authorization, and if the dentist accepts the payment provisions therein, the dentist may proceed to provide the approved services. The dentist must accept the amount to be paid by the insurer as full payment for those services and may not bill the injured worker for any additional amount.

D. Subsequent care by other providers.

1. If the dentist who provided initial treatment does not agree to the payment offered by the insurer, the insurer shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the insurer's payment offer.

2. If the insurer cannot locate another dentist to provide the necessary services, the insurer shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial

treatment. The negotiated reimbursement may not include any balance billing to the claimant.

3. If the insurer is successful in arranging treatment with another dentist, the insurer shall notify the injured worker.

4. If, after having received notice that the insurer has arranged the services of another dentist, the injured worker chooses to obtain treatment from a different dentist, the insurer shall only be responsible for payment at 70% of UCR. Under the circumstances of this subsection (4), the treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

E. Payment or treatment disputes that cannot be resolved by the parties may be submitted to the Labor Commission's Adjudication Division for decision, pursuant to the Adjudication Division's established forms and procedures.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $6 per day for breakfast, $9 per day for lunch, $15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extend authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker, who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. 1. Except as limited in C(3), a medical provider, whose medical records are relevant to a workers' compensation claim shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. The records were created in the past ten years (15 years if permanent total disability is claimed) and;

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Requests for medical records beyond what sections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or person listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. 1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

J. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared an sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

L. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

M. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

1. History and physical;
2. Operative reports of surgery;
3. Hospital discharge summary;
4. Emergency room records;
5. Radiological reports;
6. Specialized test results; and
7. Physician SOAP notes, progress notes, or specialized reports.

(a) Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized

messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R612-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R612-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

R612-2-27. Commission Approval of Health Care Treatment Protocol.

A. Authority. Pursuant to authority granted by Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards:

1. Scientifically based: Section 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Section 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts".

3. Other standards: Pursuant to its rulemaking authority under Section 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

KEY: workers' compensation, fees, medical practitioner
December 10, 2012 34A-2-101 et seq.
Notice of Continuation April 28, 2008 34A-3-101 et seq.
34A-1-104

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-1. Authority.

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 2013, as established by the Labor Commission, shall be:

1. 0.15% for the Uninsured Employers' Fund;
2. 2.9% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
December 24, 2012 59-9-101(2)
Notice of Continuation December 8, 2010

R657. Natural Resources, Wildlife Resources.
R657-23. Utah Hunter Education Program.
R657-23-1. Purpose and Authority.

Under authority of Section 23-19-11, this rule provides the process and requirements for:

(1) hunter education instructor and student training; and

(2) presenting and obtaining proof of having successfully completed an approved hunter education course.

R657-23-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

(b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.

(c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.

(d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country, and signed by a hunter education instructor, verifying successful completion of an approved hunter education course.

(e) "Hunter Education Registration Certificate" means a document purchased from the division that is valid for 365 days from date of purchase which is required to sign up for and graduate from the hunter education course. This document becomes a valid hunting license upon validation of course completion by a certified hunter education instructor.

(f) "Practical exercise and testing day" means a student has successfully completed the hunter education course online and shall participate in taking a written test, a practical shooting test, and instruction on firearms safety and hunter responsibility during a minimum of five hours with a hunter education instructor.

(g) "Trainer" means a volunteer hunter education instructor or Division employee who has been certified by the division to train hunter education instructors.

(h) "Instructor" means a volunteer hunter education instructor or division employee who has been certified by the division to teach the hunter education program to students.

(i) "Online hunter education course" means a hunter education course that is completed online substituting the minimum 12 hours classroom requirement, and is taken through the division's Internet address.

(j) "Student" means a person who is registered in a hunter education course being taught by a certified hunter education instructor.

(k) "Traditional hunter education course" means a hunter education course that is a minimum of 12 classroom hours, a written test and a practical shooting test.

R657-23-3. Hunter Education Required.

(1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of having passed a division approved hunter education course.

(b) A person may take a hunter education course offered by the division as provided in Subsection (2), (3), or (4).

(2) Completion of a traditional hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor;

(b) attend the minimum 12-hour classroom course;

(c) behave in a safe and responsible manner in class;

(d) obtain a passing score of at least 75% on a written test; and

(e) obtain a passing score of at least 50% on a shooting practical test.

(3) Completion of the online hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor.

(b) pre-register for the field day by contacting the instructor by mail, e-mail or telephone;

(c) comprehensively read each chapter of the online workbook, and complete and obtain a passing score of at least 80% of each quiz that is provided after each chapter of the workbook;

(d) behave in a safe and responsible manner while attending the field day;

(e) obtain a passing score of at least 75% on a written test; and

(f) obtain a passing score of at least 50% on a shooting practical test.

(4)(a) The division will issue a Blue Card to each individual who successfully completes the hunter education course.

(b) A Blue Card shall not be issued to a person who has not successfully completed the hunter education requirements.

(5) A member of the United States Armed Forces or Utah National Guard is exempt from the shooting practical test required in Subsections 2 and 3 above if they can provide a copy of their federal form 201 from the military outlining their firearms training to the hunter education instructor prior to the firearms practical test.

(6) The division shall accept other states, provinces, and countries criteria and qualifications for their respective courses, which meet or exceed the International Hunter Education Association hunter education standards.

R657-23-4. Documents Accepted as Proof of Completion of a Hunter Education Course.

(1) The division and division approved license agents shall accept proof of completion of an approved hunter education course in accordance with Section 23-19-11.

(2)(a) Any person who has completed an approved hunter education course in another state, province, or country and becomes a Utah resident must obtain a transfer Blue Card prior to purchasing a resident hunting license.

(b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).

(3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.

(4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.

(5)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office, or may contact an authorized division representative to obtain a duplicate Blue Card. The person must complete an affidavit and request a record's search.

(b) Upon verification of completion of the hunter education course, the division or authorized division

representative may issue the person a duplicate Blue Card.

(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under Section R657-23-3.

(7) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.

(8) The division may charge a fee for the services provided in Subsections (2), (3), (4), and (5).

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to: EITHER

(a) attend the 18 hour classroom course conducted by a trainer;

(b) pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) obtain a passing score of at least 80% on a written test; and

(d) obtain a passing score of at least 50% on a shooting practical test.

OR

(a) Complete the Division's online instructor course.

(b) Pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) Attend a 6 hour workshop conducted by a trainer.

(d) Obtain a passing score of at least 75% on a written test; and

(e) Obtain a passing score of at least 50% on a shooting practical test.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

KEY: wildlife, game laws, hunter education
August 21, 2008 23-19-11
Notice of Continuation December 5, 2012

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Accompany" means at a distance within which visual contact and verbal communication are maintained without the assistance of any electronic device.

(b) "Bait" means any lure containing animal, mineral or plant materials.

(c) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(d) "Bear" means Ursus americanus, commonly known as black bear.

(e) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(f) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing bear for any purpose.

(g) "Cub" means a bear less than one year of age.

(h) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(i) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(j) "Green pelt" means the untanned hide or skin of a bear.

(k) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking bear.

(l) "Harvest-objective permit" means any permit valid on harvest-objective units.

(m) "Harvest-objective unit" means any unit designated as harvest-objective in the hunt table of the guidebook for taking bear.

(n) "Limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include harvest objective hunts or pursuit only.

(o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(p) "Premium limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a premium limited entry hunt and does not include harvest objective hunts or pursuit only.

(q) "Premium limited entry permit" means any permit obtained for a premium limited entry hunt as published in the guidebook of the Wildlife Board for taking bear.

(r) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(s) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(t) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

(u) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

(v)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

(w) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

(x) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-33-3. Permits for Taking Bear.

(1)(a) To harvest a bear, a person must first obtain a valid limited entry bear permit or a harvest objective bear permit for a specified hunt unit as provided in the guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit may pursue bear without a pursuit permit while hunting on the unit for which the take permit is valid, provided the person is the dog handler.

(2) A person may not apply for or obtain more than one bear permit for the same season, except if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(3) Any bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(4) Residents and nonresidents may apply for limited entry bear permits and purchase harvest objective bear permits and bear pursuit permits.

(5) A mandatory orientation course is required for hunters who obtain a permit to hunt black bear.

(6) To obtain a bear limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-4. Permits for Pursuing Bear.

(1)(a) To pursue bear without a limited entry bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take bear:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained a limited entry bear archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery bear hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear provided he or she possesses:

(a) a valid limited entry bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the dog handler must have:

(a) a limited entry bear or harvest objective permit issued

to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry bear permit for the area; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry bear or harvest objective permit for the area.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry bear or harvest objective permit only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit seasons as established by the Wildlife Board in guidebook.

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a Certificate of Registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a Certificate of Registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(7) A handling fee must accompany the application.

(8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use no more than two bait stations. The bait station(s) may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail;

(b) 1/2 mile of any permanent dwelling or campground; or

(c) any area identified as potentially increasing nuisance bear activity by the division.

(6) Violations of this rule and the guidebook of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

R657-33-17. Permanent Tag.

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or

(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating bear and must be verified by Wildlife Services or division personnel.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, determine harvest success and other valuable information.

R657-33-25. Taking Bear.

(1)(a) A person who has obtained a limited entry bear permit may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in the guidebook of the Wildlife Board for taking bear.

(i) A mandatory online orientation course is required for hunters who wish to purchase a harvest objective permit to hunt black bear.

(2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.

(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.

(5) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-26. Bear Pursuit.

(1)(a) Except as provided in rule R657-33-3(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear; or

(ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) The Wildlife Board may establish or designate in guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry bear permit; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.

(i) A dog owner pursuing bear on a restricted pursuit unit may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog owner;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The Division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in guidebook; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-27. Limited Entry Bear Permit Application Information.

(1) Limited entry bear permits are issued pursuant to R657-62-20.

R657-33-28. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-29. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking bear.

(2) Harvest objective permits are not valid in a specified unit after the harvest objective has been met for that harvest objective unit.

R657-33-30. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come,

first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking bear.

(2) Any bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-33-31. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-5466 or visit the division's website to verify that the bear management area is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the bear harvest objective for that harvest objective unit is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking bear.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue bear except as provided in Section R657-33-26.

R657-33-32. Harvest Objective Unit Reporting.

(1) Any person taking a bear with a harvest objective permit must report to the division, within 48 hours, where the bear was taken and have a permanent tag affixed pursuant to Section R657-33-17.

(2) Failure to accurately report the correct harvest objective management unit where the bear was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-33-33. Fees.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-33-34. Drawings and Remaining Permits.

Remaining limited entry bear permits are issued pursuant to R657-62.

R657-33-35. Bonus Points.

Bonus points are accrued and used pursuant to R657-62-8.

R657-33-36. Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

R657-33-37. Duplicate License and Permit.

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

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April 2, 2012 23-14-18
Notice of Continuation December 5, 2012 23-14-19
23-13-2

R708. Public Safety, Driver License.
R708-47. Emergency Contact Database.
R708-47-1. Authority.

This rule is authorized by Subsection 53-3-205.6(4).

R708-47-2. Purpose.

The purpose of this rule is to establish procedures whereby a licensee may designate an emergency contact person that may be notified if the licensee is involved in a motor vehicle accident or other emergency situation when the licensee is unable to communicate with the person.

R708-47-3. Definitions.

(1) Definitions used in this rule are found in Section 53-3-102.

(2) In addition:

(a) EMER means an Emergency Contact Database form;

(b) "emergency contact database" means the database maintained by the division which contains all of the information provided by a licensee regarding the licensee's emergency contact person;

(c) "emergency contact information" means the contact information for a licensee's emergency contact person including the emergency contact person's:

(i) name;

(ii) address;

(iii) relationship to the licensee; and

(iv) up to three (3) telephone numbers;

(d) "emergency contact person" means anyone designated by a licensee to be notified if the licensee is involved in a motor vehicle accident or other emergency situation when the licensee is unable to communicate with the person;

(e) "licensee" means a person who holds a license certificate, learner permit, identification card, or any other type of license or permit issued under Title 53, Chapter 3; and

(f) "Utah Interactive" means the company which contracts with the state to provide and maintain web services for the division.

R708-47-4. Method to Provide or Change Emergency Contact Information.

(1) A licensee may provide or change emergency contact information by:

(a) accessing the web service provided by Utah Interactive; or

(b) submitting a completed EMER to the division.

KEY: emergency contact database
December 26, 2012 53-3-205.6

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-300. Concealed Firearm Permit and Instructor Rule.
R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Section 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or a LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Section 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Section 53-5-704(8);

(c) " certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Section 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Section 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32A-12-209;

(ii) Section 32A-12-220;

(iii) Section 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Section 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide.

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification. Revocation of a permit, instructor certification, or certificate of qualification does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit must submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau which shall include the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card, which consists of the fee established by Section 53-5-704 and 53-5-707, along with the FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) if the applicant is a nonresident who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law, a copy of the applicant's current concealed firearm permit or concealed weapon permit issued by the applicant's state of residency.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(i) shall not be required to pay the application fee; and

(ii) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsection 53-5-704(2) and (3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(2) and (3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight (8) hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification must submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau which shall include the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card.

(2) In addition to the items listed in Subsection (1)(b), an instructor seeking to renew an instructor certification must submit evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(3) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(4) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than thirty days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(5) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(6)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(7)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. Application for a LEOJ Permit.

(1)(a) In order to obtain a LEOJ permit under Section 53-5-711, an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for a LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue a LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-9. Termination of LEOJ Status.

(1) When the bureau receives notice that a LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(2) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue a LEOJ permit.

R722-300-10. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or a LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) A LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that a LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) a LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or a LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested,

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

R722-300-11. Review Hearing Before the Board.

(1)(a) Review hearings before the board will be informal and shall be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau must establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which shall:

(a) state the board's decision and the reasons for the board's decision; and

(b) indicate that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-12. Records Access.

(1) Information provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsections 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

KEY: concealed firearm permits, concealed firearm permit instructors
December 10, 2012 53-5-701 through 53-5-711

R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.
R746-343-1. Purpose and Authority.

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.

A. Definitions

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.

A. Approved Application--

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.

A. Distribution Centers shall:

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a criminal activity as defined by Utah or federal law.

R746-343-15. Surcharge.

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is $.06 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically handicapped, rates, telecommunications
June 20, 2012 54-8b-10
Notice of Continuation December 10, 2012

R746. Public Service Commission, Administration.
R746-346. Operator-Assisted Services.
R746-346-1. General Provisions.

A. Authorization -- Section 54-8b-13 requires that the Commission establish rules for operator-assisted services.

B. Title -- These rules shall be known and may be cited as Operator-Assisted Service Rules.

C. Scope and Applicability -- These rules are intended to assure that the specific requirements of 54-8b-13(1)(a)-(d) are placed into effect.

R746-346-2. General Definitions.

The following words and terms shall have the following meaning in this section, unless the context clearly indicates otherwise:

A. "Aggregator" -- A person that:

1. is not a telecommunications corporation;

2. in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider;

3. receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator service provider.

B. "Automatic Number Identification" -- The ability to automatically identify the originating telephone number from the local switching system.

C. "Call Splashing" -- Call transferring, whether caller requested or operator service provider initiated, that results in a call being rated or billed from a site different from the one from which the call originated.

D. Call Transferring" -- Processing of a call from one operator service provider to another operator service provider.

E. "End User Choice" -- The ability to route operator-assisted calls to the billed party's chosen operator service provider and telecommunication carrier.

F. "Operator-Assisted Service" -- Services which assist callers in placing or charging a telephone call, either through live intervention or automated intervention.

G. "Operator Service Provider" -- A person who provides, for a fee to a caller, operator-assisted services.

K. "Originating Line Screening" -- A two-digit code passed by the local switching system, with the automatic number identification, at the beginning of a call that provides information about the originating line.

L. "Redirect the Call" -- A procedure used by operator service providers that transmits a signal back to the originating telephone instrument and causes the instrument to disconnect the operator service provider's connection and to redial the digits, originally dialed by the caller, directly to the local exchange carrier's network.

R746-346-3. Information to be Provided at the Telephone Set.

A. Notice -- A contract between an operator service provider and a call aggregator for the provision of operator service to public telephones shall require the call aggregator to attach to or prominently display near each public telephone a notice that provides:

1. the name, address and toll-free number of the operator service provider;

2. instructions for accessing the operator service provider;

3. when technically feasible, instructions for accessing any other operator service provider operating in the relevant geographical area;

4. instructions for accessing the public safety emergency telephone numbers for the jurisdiction where aggregator's telephone service is geographically located;

B. Correctional Facility Telephones -- The requirements of section R746-346-3(A)(3) and (4) shall not apply to telephones located in the secured inmate areas of correctional facilities.

R746-346-4. Requirements before Call is Completed.

The provider of operator services shall:

A. identify itself to the customer upon answering calls;

B. identify itself to the billed party if the billed party is different from the caller;

C. quote rate information at the caller's request, without charge, 24 hours a day, seven days a week;

D. permit the caller to terminate the call at no charge prior to completion of the call by the operator service provider.

R746-346-5. Uncompleted Call.

A. Billing -- No operator service provider shall charge for uncompleted calls.

B. Determination -- If the operator service provider cannot determine with certainty that a call was completed, it shall provide a full credit for a call of one minute or less upon being informed by a customer that the call was not completed.

C. Includes -- An uncompleted call includes calls terminating to an intercept recording live intercept operator, a busy tone, or unanswered calls.

D. Does Not Include -- An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.

R746-346-6. 911 Calls, "0-" Calls, and End-User Choice.

A. "911" Calls -- A contract between an operator service provider and a call aggregator for the provision of operator services using public telephones shall require that "911" calls to be connected directly to the public emergency agency serving the geographic location from which the call was made without charge.

B. "0-" Calls -- When end-user choice is not available the contract between an operator service provider and a call aggregator for the provision of operator services through public telephones shall require the operator service provider to directly route "0-" calls to the local exchange carrier operator without charge to the calling party, unless the operator service provider provides direct access to emergency service providers. In providing access to emergency service providers, the operator service provider shall:

1. identify the originating telephone number and the location of the originating telephone, except that local exchange carriers shall be allowed to identify the location using internal sources such as repair service or business office records if the internal sources are accessible to operators for emergency purposes 24 hours a day;

2. have a complete and current list of emergency service provider telephone numbers for each telephone prefix served, including police or sheriff, fire, and ambulance;

3. be available 24 hours a day, seven days a week, without charge;

4. promptly connect the caller to the public emergency agency serving the geographic locality from which the call is made;

5. stay on the line until the operator determines that the caller is connected to the proper emergency agency;

C. Correctional Facilities -- The requirements of R746-346-6 shall not apply to telephones located in secured inmate areas of correctional facilities.

D. Initial Routing -- Nothing in this section shall require the initial routing of "0-" calls from public or semi-public, shared pay phone, telephones owned by the local exchange carrier to an operator service provider other than the local exchange carrier itself.

R746-346-7. Customer Complaints.

A. Toll-Free Number -- The operator service provider shall have a toll-free telephone number that callers may use from 8 a.m. to 5 p.m., Monday through Friday to make complaints and inquiries.

B. Process -- Upon complaint to the operator service provider by a customer either at its office, by letter, or by telephone, the operator service provider may attempt to resolve the complaint, but if it is unwilling or unable to do so shall advise the complainant of the Commission's complaint process and give the complainant the address and telephone number of the Compliance and Complaint Section of the Division. If appropriate, the operator service provider shall also give the customer the Commission's telephone device for the deaf number.

C. Investigation -- The operator service provider shall make an investigation of complaints forwarded from the Commission on behalf of a customer. The operator service provider shall formally advise the Commission of the results of the investigation within ten days after the complaint is forwarded by the Commission.

R746-346-8. Caller Access.

A. Contract -- A contract between an operator service provider and a call aggregator for the provision of operator services through public telephones shall require that the caller have access to the local exchange carrier operator servicing the exchange from which the call is made and to other telecommunication utilities, unless otherwise provided in R746-346-8(C).

B. Conditions -- The access required by this section shall be subject to the following conditions:

1. Caller access to the local exchange carrier operator shall be accomplished either:

a. by directly routing all "0-" calls to the local exchange carrier operator without charge to the caller; or

b. by transfer or redirection of the call by the operator service provider, without charge to the caller so that the local exchange carrier operator receives all signaling information, for example automatic number identification and originating line screening, that would have been received by the local exchange operator if the call had been directly routed to the local exchange carrier. The operator service provider shall be in compliance with the requirements of R746-346-6(B).

2. Caller access to interexchange carriers by "950-XXXX" and "1-800" numbers shall not be blocked.

3. Caller access to interexchange carriers by "10XXX+0," whether "10XXX+0+" or "10XXX+0," dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of "10XXX+0," whether "10XXX+0+" or "10XXX+0-," dialing if the call aggregator:

a. has subscribed to the necessary local exchange company outgoing call screening feature to ensure that appropriate originating line screening is transmitted with each call; and

b. has provided 30 days notice to the interexchange carrier that originating screening is available.

C. Waiver -- Application for waiver of the above caller access requirements may be filed with the Commission by the call aggregator or the operator service provider to prevent fraudulent use of telephone services or for other good cause. If the application for waiver pertains to technical limitations of equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.

R746-346-9. Call Splashing.

No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If the transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through means provided by that other operator service provider.

R746-346-10. Enforcement.

The Commission or the Division shall investigate any complaint against an aggregator, operator service provider, interexchange carrier, or local exchange carrier alleged to have violated these rules. The alleged violator shall be given an opportunity to informally resolve complaints involving violation of these rules. If no resolution is achieved informally, the Commission or the Division may, upon its own motion or upon request of the original complainant, formally investigate the complaint and, upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, may take action as it deems justified pursuant to 54-8b-13(3).

KEY: public utilities, telecommunications, telephone utility regulation
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R746. Public Service Commission, Administration.
R746-356. Intrastate (IntraLATA) Equal Access To Toll Calling Services By Telecommunications Carriers.
R746-356-1. Purpose and Authority.

A. Purpose --

1. These rules establish procedures and methods by which all Commission certified local exchange carrier telecommunications corporations (LECs) will provide and maintain equal access, and customer dialing parity, to intrastate (intraLATA) toll services when requested by one or more Commission or Federal Communications Commission (FCC) certified telecommunications corporations or common carriers.

2. The costs of the equal access implementation and continuing service shall be fairly and reasonably distributed based on the future toll service market share achieved by the LEC and all certified telecommunications carriers requesting equal access service.

3. The provisioning of interLATA interstate toll services by a subsidiary, or an affiliate, of a LEC will be considered to be the same as those services being provided by the LEC itself for implementation of intrastate equal access.

B. Authority --

1. Section 54-8b-2.2(3) requires that the Commission establish these rules.

2. Title 47 U.S.C. Section 271(e)(2)requires implementation of intraLATA equal access for Bell Operating Company interLATA service offerings.

3. Title 47 U.S.C. Section 251 (b)(3), requires all LECs to provide intraLATA equal access when requested by a commission or FCC certified telecommunications corporation or common carrier, or when the LEC commences providing in-region or interstate interLATA toll service to its customers, with some exceptions as defined in 47 U.S.C. Section 251(f)(2).

R746-356-2. Definitions.

For purposes of these rules, the following terms shall bear the associated meanings. All other terms are as defined in Section 54-8b.

A. "Bona Fide Request" -- A written request submitted by a telecommunications corporation or common carrier certified by the Commission or the FCC for intraLATA or intraLATA equal access service in an exchange or exchanges of a LEC.

B. "CCS" -- Committee of Consumer Services.

C. "Division" -- Division of Public Utilities.

D. "Equal Access" -- Dialing arrangements and other service characteristics provided by a LEC to other carriers that are equivalent in type and quality to that provided by the LEC, or designated contract carrier, for its provision of intraLATA toll service.

E. "Presubscription" -- A process that allows customers to preselect the carrier that has equal access services for providing toll calls through the use of 1+ or 0+ without dialing a multi-digit access code.

F. "Presubscribed Interexchange Carrier"(PIC) -- The certified telecommunications carrier a customer selects to provide 1+ or 0+ toll service, without the use of access codes, following equal access presubscription implementation.

G. "2-PIC" -- The equal access presubscription option that affords customers the opportunity to select one certified telecommunications carrier for all interLATA 1+ or 0+ toll calls and, at the customer's option, to select another certified telecommunications carrier for all intraLATA 1+ or 0+ toll calls.

R746-356-3. Equal Access Implementation.

A. Implementation -- LECs shall proceed to implement intraLATA equal access, using the 2-PIC method, in accordance with the following criteria:

1. Any LEC that has an equal access implementation plan approved by the Commission shall comply with and maintain equal access in accordance with its approved plan as amended or modified withCommission approval.

2. Any LEC that does not have an equal access implementation plan approved by the Commission will respond to a bona fide request, or on its own initiative, by filing an implementation plan with the Commission within 30 days.

a. The target date for implementation shall be no later than seven months from the date of receipt of the bona fide request.

b. Copies of the plan shall be mailed to the requesting telecommunications carrier, all other carriers subscribing to the LEC's interLATA equal access service, the Commission, and the Division.

3. A LEC can request a temporary waiver of the requirement to implement intraLATA equal access for one or more of its exchange areas, when it can prove that it does not have the technical or economic abilities to provide intraLATA equal access service.

a. The Commission, after notice and opportunity for hearing, may grant a waiver upon a showing of a lack of technical or economic ability.

b. When a LEC receives a waiver it shall implement interLATA and IntraLATA equal access by the date established in the Commission waiver.

B. Approval of Equal Access Plans -- The Commission will assign each LEC equal access plan a docket number and issue a notice of the proceeding to all parties on its telecommunications list.

1. The Commission shall approve each plan within 45 days of the filed date, unless hearings are required to approve the implementation plan.

2. The plan target date(s) will be automatically extended by the number of days in excess of 45 required to finally approve a plan.

C. Exemption of Toll Services -- A LEC shall continue to provide retail toll services as a carrier of last resort for its own certified territory, or as a PIC for its own certified territory, until an order of exemption is issued by the Commission.

D. Continued Services -- LECs will continue to provide services for customer dialed number protocols 0-, Nll, 411,611, 911, and 976. These numbers are not equal access and call routing will continue to be processed unchanged by the LEC following the implementation of intraLATA equal access. Calls using customer dialed protocols, such as 500, 700, 800, 900, 10356, and 101356X, are not subject to presubscription and they will continue to be routed to the appropriate non-equal access carrier.

E. Routing Interface Signaling -- All carriers shall establish uniform end-to-end message routing interface signaling that includes at least the carrier identification code (CIC), originating line or trunk telephone number, and terminating line or trunk telephone number. This requirement is to permit direct billing to the responsible carrier(s) for use of the switched access network elements provided by other carriers.

R746-356-4. Equal Access Implementation Plans.

A. Criteria -- An intraLATA equal access implementation plan filed with the Commission, with a copy to the Division, shall include at least the following:

1. the planned individual central office or exchange cutover dates;

2. a schedule of any planned hardware and software upgrades required;

3. estimated investments and expenses for the planned upgrades;

4. estimated internal training expenses;

5. estimated cutover expenses;

6. estimated administrative expenses for preparing and filing tariffs or price lists;

7. estimated order processing expenses;

8. estimated customer notification and education expenses;

9. the computations of its estimated proposed equal access recovery charges; and

10. a copy of the work papers used to calculate the information required by R746-356-4(A)(3) through (9).

B. Service of Plans -- Copies of the plan shall be served on the Division, CCS, and all telecommunications carriers that then subscribe to interLATA equal access from the LEC.

C. Status Reports -- In the Commission approval of a plan, the Commission shall establish the LEC's reporting requirements for reporting implementation progress, with a final report filed after implementation.

R746-356-5. Customer Education, Notification, and Presubscription Contact Procedure.

A. Customer Information -- Equal access customer instructional materials, forms, and notification letters developed by a LEC, shall be competitively neutral and unbiased as to the presubscription process. They shall clearly state the available PICs and a toll free contact number for each PIC. The proposed text of the first mailing letter shall be filed with the Commission and the Division at least 60 days prior to equal access implementation.

B. Customer Notification -- Customer notification of the initial availability of intraLATA equal access will be provided as follows:

1. For exchanges in which interLATA equal access balloting is required, the ballot information shall be expanded to provide customer instructions that will allow the customer to presubscribe to both an interLATA and an intraLATA PIC, including the LEC.

2. For exchanges in which interLATA equal access has previously been provided, the balloting procedure will not be required. The LEC will provide notification of the intraLATA equal access implementation, and request that the customers preselect their PIC by letter required by R746-356-5(A). The letter will be sent to all LEC customers by 1st Class Mail no earlier than 45 days and no later than 15 days prior to the scheduled implementation date for each exchange.

3. Customers applying for local exchange service after the initial equal access notification mailing(s), but before implementation of equal access, shall receive a copy of the notification letter from the LEC.

4. Each PIC will be responsible for providing the LEC(s) with a current toll free number(s) to be included in the initial customer equal access notification letter.

5. The LEC will not be required to modify the customer notification letter seven days prior to the first mailing for the purpose of including another PIC that did not file a bona fide request in time for the letter preparation.

C. Subsequent Customer Notification -- Subsequent to the equal access implementation of each exchange. The following procedures shall apply to all customer contacts and requests:

1. Customers applying for new local exchange service from the LEC shall be informed of the presubscription process and their choice of available PICs from a list that is referred to by the service representative in a rotational or random manner. This list must be constructed so that a LEC, and any of its subsidiaries, or affiliates, are not listed more than once, nor mentioned or written adjacent to one another. When a LEC and its subsidiary, or affiliate, have very similar names, the customer must be specifically advised as to the relationship between the entities.

2. Each new customer shall be required to select both an interLATA PIC and an intraLATA PIC. A customer who does not select a PIC(s) shall be informed that they will not be presubscribed to any toll provider, and will be required to utilize access codes when placing toll calls, until that customer selects a PIC.

3. When a customer requests more information about a specific PIC, other than the LEC, the LEC representative shall refer the caller to the PIC.

4. When a customer requests or advises the LEC representative of an address change, with or without a number change, the LEC shall assume that the existing PICs will not change for the new address, unless the customer voluntarily directs the LEC to do otherwise.

5. When a customer reports trouble in placing intraLATA toll calls, the LEC representative shall first determine whether the customer is presubscribed to a PIC. If so, the report will be handled as a service complaint pursuant to the procedure in effect between the LEC and the PIC. If the customer is not presubscribed, the customer will be asked to select a PIC in the manner of a new customer, per R746-356-5(C)(1).

6. LEC representatives may market their company's intraLATA service when handling "general service" calls with customers. A general service call is a call to the LEC requesting general information about the LEC's services, the establishment or removal of the LEC's services, billing inquiries, or calls relating to any other aspect of the services then provided to the customer by the LEC. General service calls do not include calls requesting a specific PIC change, address change, or telephone number change from existing customers.

R746-356-6. Presubscription Selection Procedures.

A. Initial and Subsequent Orders -- The initial and subsequent orders for presubscribed PIC selections of customers shall be placed with a LEC by the customers or carriers, and confirmed pursuant to any FCC requirements and R746-349-3, Filing Requirements.

B. Multiple PIC Change Orders -- When a LEC receives multiple PIC change orders for the same customer, the LEC shall process and implement the PIC change order with the latest date.

C. Authorized Selections -- PIC presubscription selections shall only be authorized and valid when made by the "account holder" as defined in R746-240-2(A).

D. Payphone and Shared Tenent Services -- IntraLATA PIC presubscription shall be available to public and semi-public pay phone services and to Shared Tenant Services (STS). When the LEC receives differing PIC selection directions from a pay phone service or a STS provider and a premises owner, or a legally authorized representative of the premises owner, the LEC will assign the PIC selection of the owner.

E. Automatic PIC Assignment -- During the initial intraLATA equal access implementation of each exchange or central office, the existing customers that do not provide a PIC selection to the LEC, or to an equal access requesting carrier, will automatically receive the equal access PIC of the LEC serving the customer.

R746-356-7. Presubscription Charges.

A. Single PIC Selection Charge -- The LEC will establish an intraLATA equal access presubscription charge for new service PIC selections, or PIC selection changes. This charge will initially be the same as the LEC's interLATA charge. This charge will be subject to change and approval of the Commission. This intraLATA charge will apply when the customer is establishing or changing only the intraLATA PIC presubscription.

B. Multiple PIC Selection Charge -- The LEC will establish another intraLATA equal access presubscription charge that will apply when a customer orders the simultaneous installation or change of presubscription of both the intraLATA and interLATA PICs. Initially, the IntraLATA PIC charge applied when there is an order for both intraLATA and InterLATA PICs will be one-half of the intraLATA PIC charge

pursuant to R746-356-7(A). This charge will be subject to change and approval of the Commission.

C. Waiver --

1. During the initial equal access implementation for each exchange, the intraLATA presubscription charge shall not be imposed on the customers for their initial PIC selection.

2. Customers will be allowed to make one intraLATA PIC selection change within a four month period following implementation date of each exchange or central office without being billed the intraLATA presubscription PIC charge.

3. The PIC charge shall be imposed for any subsequent intraLATA PIC changes, or after the four-month period ,whichever occurs first.

4. If customers change their interLATA PIC at the same time they initially select an intraLATA PIC, the customer shall be billed only the interLATA PIC change charge.

D. New Customer Waiver -- New customers receiving service from a LEC, who do not initially select a presubscribed intraLATA PIC, may select a presubscribed interLATA during the first four-months of service without incurring the intraLATA PIC charge.

R746-356-8. Equal Access Implementation Cost Recovery Procedure.

A. Recovery of Waived PIC Charges -- The LEC shall bill each equal access telecommunications carrier for the presubscription PIC charges waived by R746-356-7(C) or (D).

B. Recovery of Expenses -- Any recovery of recurring and one-time expenses incurred for the provision of intraLATA equal access shall be through a separate, temporary equal access recovery charge (EARC) element in a LEC's switched access and toll tariffs or price lists. These expenses may include:

1. the incremental additional expenses related directly to the provision of hardware and software investments not required to upgrade the switching capabilities of each central office absent the provision of the intraLATA equal access;

2. expenses for the incremental additional training of customer contact personnel in the additional processing of intraLATA presubscription requests;

3. expenses related directly to the preparation, reproduction and mailing of the customer educational materials and equal access notifications;

4. expenses related directly to the preparation, reproduction and filings of the intraLATA equal access tariffs or price lists;

5. expenses for the Utah portion of the incremental additional software programming of the billing programs that would not be required absent the Utah intraLATA equal access; and

6. expenses for the Utah portion of the incremental additional software programming of the business office support systems that would not be required absent the Utah intraLATA equal access.

C. Recovery Timing -- Expenses for intraLATA equal access implementation developed from items shown in R746-356-8(B)shall be subject to approval by the Commission. The EARC shall be assessed to estimated monthly intraLATA originating switched access minutes and monthly originating LEC toll minutes of use, over a three-year period for Qwest Corporation, and over a two-year period for all other LECs.

D. True-Up --

1. For each applicable year, the EARC will be trued-up and changed based on the actual incurred expenses, the actual originating intraLATA switched access minutes billed to each PIC, and the intraLATA toll minutes billed by the LEC.

2. The true-ups shall result in an annual payment by the LEC to each participating equal access carrier for excess payments, or an annual bill from the LEC to each participating equal access carrier for any under-payments.

3. The true-ups should result in an annual inter-company payment process based on the proportional intraLATA switched access minutes previously billed to each carrier and the intraLATA toll minutes billed by the LEC.

4. The LEC and an equal access carrier may agree to alternative compensation arrangements in lieu of an annual payment.

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R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.
R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Products: include boughs, branches, pinyon nuts, cones, Juniper berries, and native seed.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78B-8-602.

R850-70-400. Permit Sales.

The agency may make sales of forest products, with the exception of sawlogs, with a Small Forest Products Permit when the total sale value does not exceed $500.00. The permit shall be on a form prescribed by the agency. Persons purchasing Small Forest Product Permits shall be restricted to a total value of $500.00 per commodity per calendar year. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

R850-70-500. Noncompetitive Sales.

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

R850-70-600. Competitive Sales.

1. Sales of forest products shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

i) the legal description of the affected lands;
ii) the species and estimated quantity of forest products;
iii) minimum sale price;
iv) bond amounts;
v) advertising and processing costs, as far as is known;
vi) dates of bidding period;
vii) date, time, and location of oral auction; and
viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within ten business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within ten business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product where the value exceeds $500.00.

2. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

2. Prior to commencement of harvest operations, the purchaser shall post with the agency bonds in the form and amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

(a) A performance bond shall be submitted in an amount

at least twice the estimated cost of rehabilitation.

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Permits and non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

(a) Increasing the amounts and extending the effective dates of bonds; and,

(b) Increasing the price of the forest products authorized by the contract.

R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1300. Fees and Procedures.

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).

KEY: forest products, administrative procedures, timber
July 2, 2004 53C-1-302(1)
Notice of Continuation December 4, 2012 53C-2-201(1)(a)

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;

(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).
(b) The courses comprising the basic designation program

are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the

cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to

the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to

the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2013 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in

length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
12	71%
11	42%
10 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes;
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
12	90%
11	82%
10	71%
09	59%
08	48%
07	38%
06	26%
05 and prior	14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers and point of sale equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
12	84%
11	70%
10	53%
09	35%
08 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.
(i) Examples of property in this class include:
(A) furniture;
(B) bars and sinks:
(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;
(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(H) theater seats;
(I) water slides; and
(J) signs, mechanical and electrical.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
12	91%
11	84%
10	75%
09	63%
08	54%
07	45%
06	36%
05	25%
04 and prior	13%

(e) Class 6 - Heavy and Medium Duty Trucks.
(i) Examples of property in this class include:
(A) heavy duty trucks;
(B) medium duty trucks;
(C) crane trucks;
(D) concrete pump trucks; and
(E) trucks with well-boring rigs.
(ii) Taxable value is calculated by applying the percent good factor against the cost new.
(iii) Cost new of vehicles in this class is defined as follows:
(A) the documented actual cost of the vehicle for new vehicles; or
(B) 75 percent of the manufacturer's suggested retail price.
(iv) For state assessed vehicles, cost new shall include the value of attached equipment.
(v) The 2013 percent good applies to 2013 models purchased in 2012.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
13	90%
12	68%
11	63%
10	57%
09	52%
08	47%
07	42%
06	36%
05	31%
04	26%
03	20%
02	15%
01	10%
00 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.
(i) Examples of property in this class include:
(A) medical and dental equipment and instruments;
(B) exam tables and chairs;
(C) microscopes; and
(D) optical equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
12	93%
11	88%
10	80%
09	70%
08	63%
07	56%
06	50%
05	42%
04	34%
03	23%
02 and prior	12%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically

advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) (A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(VII) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;

(IX) TGU modules; and

(X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
12	93%
11	88%
10	80%
09	70%
08	63%
07	56%
06	50%
05	42%
04	34%
03	23%
02 and prior	12%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
12	94%
11	91%
10	85%
09	77%
08	72%
07	68%
06	64%
05	58%
04	54%
03	46%
02	38%
01	28%
00	19%
99 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
12	62%
11	46%
10	21%
09	9%
08 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2013 model equipment purchased in 2012 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
12	51%
11	48%
10	46%
09	43%
08	40%
07	37%
06	34%
05	31%
04	28%
03	25%
02	22%
01	20%
00	17%
99 and prior	12%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent

good against the cost new.

(ii) The 2013 percent good applies to 2013 models purchased in 2012.

(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
13	90%
12	70%
11	66%
10	62%
09	58%
08	54%
07	50%
06	47%
05	43%
04	39%
03	35%
02	31%
01	27%
00	23%
99	19%
98	15%
97 and prior	11%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
12	47%
11	34%
10	24%
09	15%
08 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboards;

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators; and

(F) bulk storage tanks.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
12	96%
11	91%
10	90%
09	84%
08	82%
07	79%
06	77%
05	75%
04	74%
03	69%
02	63%
01	57%
00	50%
99	44%
98	37%
97	29%
96	22%
95	15%
94 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2013 percent good applies to 2013 models purchased in 2012.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
13	90%
12	63%
11	60%
10	58%
09	55%
08	53%
07	50%
06	48%
05	46%
04	43%
03	41%
02	38%
01	36%
00	33%
99	31%
98	29%
97	26%

96	24%
95	21%
94	19%
93	16%
92 and prior	12%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
12	92%
11	83%
10	81%
09	78%
08	73%
07	69%
06	64%
05	60%
04	52%
03	42%
02	32%
01	22%
00 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2013 percent good applies to 2013 models purchased in 2012.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
13	95%
12	87%
11	82%
10	77%
09	72%
08	67%
07	62%
06	57%
05	52%
04	47%
03	42%
02	37%
01	32%
00	27%
99	22%
98	17%
97 and prior	12%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
12	94%
11	88%
10	82%
09	77%
08	71%
07	65%
06	59%
05	54%
04	48%
03	42%
02	36%

01 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges; and

(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
12	84%
11	71%
10	54%
09	36%
08	19%
07 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
12	97%
11	95%
10	92%
09	90%
08	87%
07	84%
06	82%
05	79%
04	77%
03	74%
02	71%
01	69%
00	66%
99	64%
98	61%
97	58%
96	56%
95	53%
94	51%
93	48%
92	45%
91	43%
90	40%
89	38%
88	35%
87	32%
86	30%
85	27%
84	25%
83	22%
82	19%
81	17%
80	14%
79	12%
78 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is claimed as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
12	75%
11	50%
10	25%
09 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2013.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be

shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;
(b) the length of any continuous residency in the location claimed as domicile;
(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
(d) the presence of family members in a given location;
(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
(f) the physical location of the individual's place of business or sources of income;
(g) the use of local bank facilities or foreign bank institutions;
(h) the location of registration of vehicles, boats, and RVs;
(i) membership in clubs, churches, and other social organizations;
(j) the addresses used by the individual on such things as:
(i) telephone listings;
(ii) mail;
(iii) state and federal tax returns;
(iv) listings in official government publications or other correspondence;
(v) driver's license;
(vi) voter registration; and
(vii) tax rolls;
(k) location of public schools attended by the individual or the individual's dependents;
(l) the nature and payment of taxes in other states;
(m) declarations of the individual:
(i) communicated to third parties;
(ii) contained in deeds;
(iii) contained in insurance policies;
(iv) contained in wills;
(v) contained in letters;
(vi) contained in registers;
(vii) contained in mortgages; and
(viii) contained in leases.
(n) the exercise of civil or political rights in a given location;
(o) any failure to obtain permits and licenses normally required of a resident;
(p) the purchase of a burial plot in a particular location;
(q) the acquisition of a new residence in a different location.
(6) Administration of the Residential Exemption.
(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.
(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.
(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.
(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.
(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.
(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.
(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:
(A) the owner of record of the property;
(B) the property parcel number;
(C) the location of the property;
(D) the basis of the owner's knowledge of the use of the property;
(E) a description of the use of the property;
(F) evidence of the domicile of the inhabitants of the property; and
(G) the signature of all owners of the property certifying that the property is residential property.
(ii) The application under Subsection (6)(g)(i) shall be:
(A) on a form provided by the county; or
(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2013 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.
(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.
(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.
(c) County assessors may not deviate from the schedules.
(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.
(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:
(a) Irrigated farmland shall be assessed under the following classifications.
(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	872
2)	Cache	752
3)	Carbon	560
4)	Davis	914
5)	Emery	537
6)	Iron	851
7)	Kane	449
8)	Millard	853
9)	Salt Lake	763
10)	Utah	801
11)	Washington	703
12)	Weber	856

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	766
2)	Cache	642
3)	Carbon	446
4)	Davis	803
5)	Duchesne	523
6)	Emery	432
7)	Grand	414
8)	Iron	746
9)	Juab	477
10)	Kane	345

11)	Millard	748
12)	Salt Lake	656
13)	Sanpete	576
14)	Sevier	602
15)	Summit	497
16)	Tooele	487
17)	Utah	693
18)	Wasatch	524
19)	Washington	599
20)	Weber	751

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	610
2)	Box Elder	603
3)	Cache	487
4)	Carbon	295
5)	Davis	646
6)	Duchesne	367
7)	Emery	272
8)	Garfield	227
9)	Grand	261
10)	Iron	593
11)	Juab	321
12)	Kane	191
13)	Millard	592
14)	Morgan	416
15)	Piute	358
16)	Rich	191
17)	Salt Lake	499
18)	San Juan	195
19)	Sanpete	422
20)	Sevier	448
21)	Summit	338
22)	Tooele	326
23)	Uintah	397
24)	Utah	531
25)	Wasatch	364
26)	Washington	440
27)	Wayne	354
28)	Weber	597

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	502
2)	Box Elder	498
3)	Cache	378
4)	Carbon	190
5)	Daggett	208
6)	Davis	540
7)	Duchesne	257
8)	Emery	169
9)	Garfield	122
10)	Grand	158
11)	Iron	484
12)	Juab	213
13)	Kane	87
14)	Millard	482
15)	Morgan	308
16)	Piute	250
17)	Rich	89
18)	Salt Lake	387
19)	San Juan	89
20)	Sanpete	317
21)	Sevier	343
22)	Summit	234
23)	Tooele	222
24)	Uintah	293
25)	Utah	427
26)	Wasatch	260
27)	Washington	331
28)	Wayne	250
29)	Weber	487

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	588
2)	Box Elder	637
3)	Cache	588
4)	Carbon	588
5)	Davis	642
6)	Duchesne	588
7)	Emery	588
8)	Garfield	588
9)	Grand	588
10)	Iron	588
11)	Juab	588
12)	Kane	588
13)	Millard	588
14)	Morgan	588
15)	Piute	588
16)	Salt Lake	588
17)	San Juan	588
18)	Sanpete	588
19)	Sevier	588
20)	Summit	588
21)	Tooele	588
22)	Uintah	588
23)	Utah	647
24)	Wasatch	588
25)	Washington	696
26)	Wayne	588
27)	Weber	642

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	247
2)	Box Elder	266
3)	Cache	275
4)	Carbon	133
5)	Daggett	163
6)	Davis	278
7)	Duchesne	170
8)	Emery	142
9)	Garfield	107
10)	Grand	137
11)	Iron	268
12)	Juab	156
13)	Kane	112
14)	Millard	200
15)	Morgan	202
16)	Piute	196
17)	Rich	108
18)	Salt Lake	231
19)	Sanpete	199
20)	Sevier	204
21)	Summit	207
22)	Tooele	192
23)	Uintah	212
24)	Utah	257
25)	Wasatch	214
26)	Washington	234
27)	Wayne	177
28)	Weber	311

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	56
2)	Box Elder	102
3)	Cache	129
4)	Carbon	53
5)	Davis	55
6)	Duchesne	58
7)	Garfield	52
8)	Grand	53
9)	Iron	53
10)	Juab	54
11)	Kane	52
12)	Millard	51
13)	Morgan	69

14)	Rich	52
15)	Salt Lake	58
16)	San Juan	59
17)	Sanpete	58
18)	Summit	52
19)	Tooele	56
20)	Uintah	58
21)	Utah	54
22)	Wasatch	52
23)	Washington	52
24)	Weber	83

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	17
2)	Box Elder	64
3)	Cache	90
4)	Carbon	16
5)	Davis	17
6)	Duchesne	21
7)	Garfield	16
8)	Grand	16
9)	Iron	16
10)	Juab	17
11)	Kane	16
12)	Millard	15
13)	Morgan	31
14)	Rich	16
15)	Salt Lake	17
16)	San Juan	19
17)	Sanpete	21
18)	Summit	16
19)	Tooele	16
20)	Uintah	21
21)	Utah	17
22)	Wasatch	16
23)	Washington	15
24)	Weber	48

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	75
2)	Box Elder	76
3)	Cache	73
4)	Carbon	53
5)	Daggett	54
6)	Davis	62
7)	Duchesne	70
8)	Emery	73
9)	Garfield	80
10)	Grand	81
11)	Iron	77
12)	Juab	66
13)	Kane	75
14)	Millard	79
15)	Morgan	69
16)	Piute	92
17)	Rich	67
18)	Salt Lake	70
19)	San Juan	80
20)	Sanpete	64
21)	Sevier	65
22)	Summit	74
23)	Tooele	73
24)	Uintah	84
25)	Utah	67
26)	Wasatch	53
27)	Washington	66
28)	Wayne	91
29)	Weber	72

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	23
2)	Box Elder	23
3)	Cache	24
4)	Carbon	16
5)	Daggett	15
6)	Davis	20
7)	Duchesne	23
8)	Emery	22
9)	Garfield	24
10)	Grand	23
11)	Iron	23
12)	Juab	20
13)	Kane	24
14)	Millard	25
15)	Morgan	22
16)	Piute	27
17)	Rich	21
18)	Salt Lake	22
19)	San Juan	26
20)	Sanpete	19
21)	Sevier	19
22)	Summit	21
23)	Tooele	21
24)	Uintah	29
25)	Utah	24
26)	Wasatch	18
27)	Washington	22
28)	Wayne	29
29)	Weber	21

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	17
2)	Box Elder	18
3)	Cache	16
4)	Carbon	13
5)	Daggett	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	15
9)	Garfield	17
10)	Grand	16
11)	Iron	16
12)	Juab	14
13)	Kane	16
14)	Millard	17
15)	Morgan	14
16)	Piute	19
17)	Rich	14
18)	Salt Lake	15
19)	San Juan	17
20)	Sanpete	14
21)	Sevier	14
22)	Summit	15
23)	Tooele	14
24)	Uintah	20
25)	Utah	14
26)	Wasatch	13
27)	Washington	14
28)	Wayne	19
29)	Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5

15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on

the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless

specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and

best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and

deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections

(6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.

(3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the information required under Subsection (3) is supplied, the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no

co-owner of the property was capable of filing an appeal.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

a) the Utah Housing Corporation project identification number;

b) the project name;

c) the project address;

d) the city in which the project is located;

e) the county in which the project is located;

f) the building identification number assigned by the Internal Revenue Service for each building included in the project;

g) the building address for each building included in the project;

h) the total apartment units included in the project;

i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

(1) the rehabilitation of an existing building; or

(2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

(1) the number of bedrooms in the apartment unit;

(2) the size of the apartment unit in square feet; and

(3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

R884-24P-73. Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703.

(1) For purposes of the property tax assessment for land used for urban farming, land is actively devoted to urban farming under Subsection 59-2-1703(2)(a)(iii) if the production per acre for a given area and a given type of land meets the productive capabilities of land classified as Irrigated I.

(2) The value of land qualifying for valuation under Section 59-2-1703 shall be determined by reference to Table 1, Irrigated I, in R884-24P-53.

KEY: taxation, personal property, property tax, appraisals
January 1, 2013 **Art. XIII, Sec 2**
Notice of Continuation January 3, 2012 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R920. Transportation, Operations, Traffic and Safety.
R920-4. Special Road Use or Event.
R920-4-1. Purpose and Authority.

The purposes of this rule are to ensure public safety and minimize disruption to the traveling public when state controlled rights of way are used for parades, marathons, film related activities, and bicycle races, and to enable special events through a responsible and controlled permitting process. This rule is authorized by Sections 72-1-201 and 41-6a-1111. This rule applies to all highways under the jurisdiction of the Utah Department of Transportation ("Department").

R920-4-2. Permit Required for Special Road Use or Event.

Special Road Use permits shall be required for any use of state highways other than normal traffic movement. A special road use or event shall not occupy the roadway until a permit is issued. Permits may be obtained by completing Department application requirements as specified on Department forms.

R920-4-3. Application Completion Requirements for Special Road Use or Event.

"Application for a Special Event Permit," or "Application for a Permit to Film on State Roads" shall be completed by the applicant seeking a Special Road Use or Event Permit. All applications for permits shall be made a minimum of 15 days prior to the specified activity.

R920-4-4. Special Event Double Booking Conflict Resolution.

Special event permits may not be accepted more than a year in advance of the actual event date. All special event permits are time and date stamped. In cases where a double booking type conflict might surface, the Department will encourage any secondary, or subsequent, applicant to review the feasibility of collocating with the original applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, applicant to offer a viable alternative strategy that meets the needs of all applicants, while also ensuring adequate public safety measures remain intact. The Department may also rely on local agency assistance with establishing special event permitting priorities. In all cases, the Department has the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors. In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, the Department reserves the right to determine which special event permit will be issued based on the earliest recorded application time and date where the Department has determined the applicant has fully completed all application requirements.

R920-4-5. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

The applicant shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its employees" as additional insured under the certificate, with a minimum $1,000,000 coverage per occurrence and $2,000,000 in aggregate. The applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

R920-4-6. Waiver and Release of Damages Exception.

Participants in a free speech event on state rights of way are not required to sign or submit the "Waiver and Release of Damages" form described in R920-4-5, however the applicant of a free speech event is still required to complete the "Indemnification" form prior to permit issuance.

R920-4-7. Applicant Record Retention Requirements.

Where multiple participants are involved in the special road use or event, the applicant is responsible for ensuring each event participant completes the appropriate "Waiver and Release of Damages" and "Indemnification" form prior to participating in the event. The originating applicant is the custodian of all signed participant waivers, as specified in R920-4-4, and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event. The Department may also require the originating applicant to sign the original forms, as specified in R920-4, prior to permit issuance.

R920-4-8. Traffic Control Requirements and Considerations.

All traffic control is the responsibility of the applicant. A traffic control plan, in accordance with R920-1, R930-6 and Barricading and Construction Standard Drawings, shall be provided to, and approved by the District Traffic Engineer, or other authorized Department designee. The applicant shall restore the particular road segment to its original condition, free from litter, etc. An alternate route may be required when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public. Road closures will require traffic control by Uniformed Peace Officers. The Department may require local police, the sheriff's department, the highway patrol, or the Department's Incident Management Team to inspect and monitor traffic control. All railroad crossings and bridges shall be given special attention. The applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

R920-4-9. Public Notification Requirements.

As determined by the Region Permit Officer, the applicant shall distribute a news release to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays. The news release shall include the date, times, affected roads, and shall also include an estimate of the anticipated length of delay.

R920-4-10. Contingency Plan and Participant Notification Requirements.

The applicant is required to develop plans for, and notify, each event participant on the following contingencies; emergency plans in the event of an accident or injury, closest hospitals, how to obtain emergency assistance, etc., locations of rest areas, locations of water facilities, trash cleanup plans, and that all participants are required to obey all traffic laws, lights, and signs.

R920-4-11. Event Route Identification and Private Property Use Requirements.

The applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

R920-4-12. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The applicant is responsible for obtaining any applicable

city, county, or other governmental agency permit. Demonstration of compliance with R920-4-12 may be required prior to the Department issuing any special road use or event permit.

KEY: parades, bicycle, races, films
December 10, 2012 41-6a-1111
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72-1-201

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 not required to participate in an employment plan under R986-200-210 and 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. If the household member is required to participate in an employment plan, 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.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(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 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 determinated 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 unforseen 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 diversion.

(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) diversion assistance does not count 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 subsequence 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:

TABLE

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 earned and 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.

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Notice of Continuation September 8, 2010

R994. Workforce Services, Unemployment Insurance.
R994-201. Definition of Terms in Employment Security Act.
R994-201-101. General Definitions and Acronyms.

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used if the ex-servicemember was honorably discharged and completed his or her first full term of service, or if the separation meets the requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I through (IV) and 20 CFR 614.

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association.

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

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